In the Matter of RUBIN BROTHERS FOOTWEAR, INC., AND RUBIN BROS. FOOTWEAR, INC. *and* UNITED SHOE WORKERS OF AMERICA, CIO

Case No. 10–CA–532.—Decided August 30, 1950

DECISION AND ORDER

On March 9, 1950, Trial Examiner Sidney Lindner issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents and the General Counsel filed exceptions to the Intermediate Report and supporting briefs. The Respondents also requested oral argument. This request is hereby denied because the record, exceptions, and briefs, in our opinion, adequately present the issues and the positions of the parties.

The Board [1] has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed.[2] The Board has considered the Intermediate Report,[3] the

[1] Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this proceeding to a three-member panel [Chairman Herzog and Members Houston and Murdock].

[2] At the hearing, the Respondents moved to dismiss the complaint on the ground that the Union and its parent body, the Congress of Industrial Organizations, herein called the CIO, had not complied with the filing requirements of Section 9 (f), (g), and (h) of the Act. The Respondents also urged noncompliance as an affirmative defense, particularly with regard to their obligation to bargain with the Union within the meaning of Section 8 (a) (5) of the Act. The Trial Examiner denied the Respondents' motion for the reason that compliance is an administrative matter to be determined by the Board, and is not litigable by the parties. For the same reason, the Trial Examiner found, and we agree, that the compliance status of the CIO is not available to the Respondents as a defense to an allegation of a refusal to bargain under Section 8 (a) (5). It is sufficient under these circumstances if the bargaining representative is in compliance and we are admnistratively advised that at all times material herein the Union was in compliance. *J. H. Rutter-Rex Manufacturing Co., Inc.*, 90 NLRB No. 15; *West Texas Utilities Company, Inc.* v. *N. L. R. B.*, 184 F. 2d 233 (C. A. D. C.).

[3] The Intermediate Report contains certain inadvertences, none of which affects the Trial Examiner's ultimate conclusions nor our concurrence therein. Accordingly, we note the following corrections: (1) Employee Griffis was receiving 87½ cents per hour, not 80 cents per hour; (2) Foreman Thomas' added remark to employee Craven and others of the same group was: "You don't think Rubin Brothers will stay down here and work a bunch of dumb farmers when they could go back up North and get skilled labor, do you?"; (3) Essie Stevens joined the Union about a week after September 17, 1948; (4) the correct number of cases of make-up shoes for delivery in February 1949 was 1,077.

exceptions [4] and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications and additions:

1. In agreement with the Trial Examiner, we find that the Respondents, on and after September 8, 1948, by numerous acts of interrogation,[5] threats of reprisal, and promises of benefit, as well as by circulating antiunion petitions,[6] coerced and restrained their employees in violation of Section 8 (a) (1) of the Act.[7]

2. We find as did the Trial Examiner, that employees Essie Stevens,[8] Julia Griffin,[9] Lola Davis,[10] Docia J. Seabolt, and George W. Hendrix, Jr., were discharged for their union activities in violation of Section 8 (a) (3) of the Act.

3. The Trial Examiner found, as do we, that on June 28, 1948, and at all times thereafter, the Respondents, in violation of Section 8 (a) (5) of the Act, refused to bargain collectively with the Union as the exclusive representative of the employees in an appropriate unit. We also adopt the Trial Examiner's further finding that the strike of the

[4] The General Counsel and the Union filed motions to dismiss the exceptions and brief of the Respondents on the ground that they were not printed or mimeographed as provided in the Board Rules and Regulations, Section 203.46 (e). Thereafter, the Union filed an amended motion to dismiss on the further ground that the Executive Secretary of the Board had no authority to extend the time for filing exceptions and brief to permit the Respondents to substitute mimeographed copies. The Union also objected to a previous extension of time granted the Respondents. Such matters are clearly within the Board's administrative discretion, and the motions to dismiss are accordingly denied.

[5] We find no support in the record for the Trial Examiner's findings that employee Spradley was questioned by Personnel Manager Bryant concerning her union membership or that Foreman Sapp told employee Justice that his union pin would not get him his rations. These findings are hereby reversed.

[6] The Trial Examiner found that employee Julian Dial testified that Foreman Dowling asked him and employee John Lord to circulate antiunion petitions. Dial testified, however, that Foreman Dowling told him, in the presence of Lord, to circulate the petitions. The Trial Examiner had discredited Lord but nevertheless relied upon his testimony to some extent in making his finding as to the antiunion petitions. Our finding that the Respondents violated the Act by circulating antiunion petitions does not rest in any part upon Lord's testimony.

[7] We find no merit in the Respondents' contention that their actions and utterances were protected as an exercise of free speech, or in their further contention that no employees were in fact coerced thereby. *Standard-Coosa-Thatcher Company,* 85 NLRB 1358, and cases cited therein; *The Red Rock Company,* 84 NLRB 521.

[8] The Trial Examiner found that Foreman Morris did not deny Stevens' testimony that Morris brought only brown elk leather to Stevens' bench on the morning of September 29, 1948. There is testimony by Morris to the effect that he did not make a mistake in assigning the leather to Stevens. In spite of this indirect denial however, we agree with the Trial Examiner, on the record as a whole, that on the morning of September 29 Morris brought only brown elk leather to Stevens' bench.

[9] In connection with Griffin's discharge, not only did Foreman Youmans admit that all the counter sewers "make mistakes all along," for which, with one exception a year or more ago, they were not disciplined, but he further admitted that these mistakes included passing of defective work to other departments, the alleged reason for Griffin's discharge.

[10] We do not adopt the Trial Examiner's subsidiary finding that Davis did not directly solicit employees to join the Union during working hours but only mentioned to them the benefits to be obtained from joining the Union. The testimony of employee Lightsey, which we credit, as did the Trial Examiner, is that Davis expressly asked her to join the Union.

Respondents' making department employees which began on August 9, 1949, was an unfair labor practice strike caused by the Respondents' unlawful refusal to bargain.

4. The Trial Examiner found that the Respondents, on various dates between September 28 and October 15, 1948, laid off the 73 employees named in Appendix A,[11] attached hereto, and reduced the hours of work of its production and maintenance employees in the period between September 27 and December 22, 1948, in order to discourage union activity, thereby violating Section 8 (a) (3) of the Act. The Respondents have excepted to these findings on the ground that the layoffs[12] and the reduction in hours of employment resulted from economic necessity. For the reasons set forth in the Intermediate Report, we agree with the Trial Examiner that the Respondents were motivated, not by economic necessity, but by a desire to discourage the organizing activities of their employees. In this connection, we make the following findings in addition to those set forth in the Intermediate Report:

(a) The Respondents' vice president in charge of sales, Oringer, testified that it was the practice of the Respondents to continue to cut stock shoes in order to keep the factory going, that "we can cut oxfords and sandals until the cows come home, or little high top shoes, because they are good—if they are not good in the spring of the year they are good in the fall of the year . . . so long as it is a staple we make it up."

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[11] At the hearing, the parties stipulated that the 73 employees listed in Appendix A of the Intermediate Report were laid off in the period between September 28 and October 15, 1948. Lucille Robinson was not included in this stipulation. In an Erratum issued by the Trial Examiner, he stated that Appendix A did not include the name of Lucille Robinson because of the stipulation of the parties. The General Counsel has excepted to the exclusion of Robinson from this list on the ground that the evidence establishes that she was one of the employees laid off for discriminatory reasons. The evidence in the record, consisting of Robinson's uncontradicted testimony that she was laid off on October 1, 1948, at which time she was told by Foreman Youmans that there was no work available for her, as well as the Respondents' payroll sheets, clearly establishes that Robinson was laid off in the same period of time and for the same reason that the Respondents advanced for the layoff of other employees. Inasmuch as we have found that the Respondents laid off the employees in question for discriminatory purposes in violation of the Act, we further find that Robinson was also laid off in violation of Section 8 (a) (3). Accordingly, the Trial Examiner's finding, based on the stipulation alone which we regard, in view of the entire record, as having only inadvertently failed to name Robinson, is hereby amended to include Robinson among the laid off employees listed in Appendix A.

Chairman Herzog dissents from this holding, believing the General Counsel to be bound by the stipulation which excluded Robinson.

[12] The Respondents argue that if the purpose of the layoffs had been to discriminate against union members they would have laid off union members throughout the plant rather than employees from the first two departments in the production process, whether or not they were union members. The fact that they laid off both union and nonunion employees in particular departments, however, is outweighed by the positive proof that the *purpose* of the layoff, whatever the manner in which it was carried out, was to discourage union activity in violation of the Act. Cf. *W. C. Nabors Company*, 89 NLRB 538.

(b) The record shows that in September 1948 a growing number of the Respondents' orders were for sandal shoes, a stock item; and that the New York office instructed the Waycross factory to increase production on sandals, with the advice to put through and make up the shoes "right away" even "where the customer calls for later delivery." The letter of September 23, 1948, from the New York office, instructed the factory to produce the regular orders for stock "and then fill them from stock," in order to assure delivery on the dates requested by the Respondents' customers. In a reply letter dated the same day, the factory indicated that as soon as the dies came in, the factory would increase production as rapidly as it could. On September 27, 1948, 1 day before the curtailment in production took place, the New York office answered, "O. K." The Respondents, in their brief, admit that the New York office, as late as September 27, 1948, instructed the factory to "step up" production.

The Respondents contend, however, that this increase was ordered so that they would be able to deliver the finished product promptly during the forthcoming period, when the Respondents expected the price of leather and of shoes to decline, and they could thereby forestall their customers from possibly using the price drop as an excuse to cancel their orders. Even assuming, however, that the Respondents' order to increase the production of sandals was nothing more than a maneuver to hold customers in line, the fact remains that the factory was ordered to "step up" production of shoes for stock as late as 1 day before the order was given to the factory to stop making stock shoes. There was no change in the price of leather between September 27 and September 28, 1948. And while we note that the New York letter of September 21 adverted to a possible change in the price of leather, it nevertheless instructed the factory to go ahead with an increase in production "until we can find out what leather is going to do." As the Trial Examiner found, no general decrease in the price of leather took place until the spring of 1949. The Respondents continued to purchase substantial amounts of leather in September 1948, and had in their plant an adequate supply of leather for the continued manufacture of stock shoes. Contrary to the Respondents' contention, the September correspondence between the factory and the New York office clearly establishes the intent of the Respondents, as late as 1 day before the curtailment of production and the consequent layoffs, to "step up" production so as to enable the factory to meet delivery dates on orders for stock shoes.

(c) Jack Rubin, comanager of the Waycross plant, testified on cross-examination that if the Respondents had had any orders on hand at the end of September 1948, production would not have been curtailed

and further, that if the Respondents had had on hand orders for 2,000 cases of make-up shoes, and at the same time were receiving numerous orders, he would not have laid off any employees or changed the hours of employment. The record shows, however, as the Trial Examiner found, that in August 1948 the Respondents received orders for 3,062 cases of shoes, of which 2,859 were for make-up shoes and 1,012 were for stock shoes; and in September, the orders received were for 9,989 cases, of which 6,435 were for make-up shoes and 3,554 were for stock shoes.

(d) As the Trial Examiner found, the Respondents had on hand, at the end of September 1948, a sufficient number of orders to run the plant at peak capacity for 2 months. Furthermore, from September 29 to October 26, 1948, the Respondents received additional orders for 2,288 cases of make-up shoes and 1,142 cases of stock shoes; of the make-up orders, 1,366 cases specified delivery before December 15, 1948. From October 27 to November 23, 1948, the Respondents received further orders for 3,576 cases of make-up shoes and 644 cases of stock shoes; of the make-up orders, 902 cases were for delivery before December 31, 1948. From November 24 to December 21, 1948, the Respondents received orders for 603 cases of make-up shoes and 482 cases of stock shoes; of the make-up orders, 90 cases were for delivery before December 31, 1948. Thus, even if the Respondents did not cut shoes for stock but worked only on those make-up orders which called for delivery by the end of 1948, there were sufficient orders on hand to maintain the factory's peak production rate until December 22 when the Respondents restored the 40-hour week.

The Remedy

As recommended by the Trial Examiner, we shall order the Respondents to offer to the laid-off employees listed in Appendix A, as well as to Essie Stevens, Julia Griffin, Lola Davis, Docia J. Seabolt, and George W. Hendrix Jr., reinstatement with back pay from the date of the discrimination against each of them. Since the issuance of the Trial Examiner's Intermediate Report, however, the Board has adopted a method of computing back pay different from that prescribed by the Trial Examiner.[13] Consistent with that new policy, we shall order that the loss of pay be computed on the basis of each separate calendar quarter or portion thereof during the period from the Respondents' discriminatory action to the date of reinstatement or a proper offer of reinstatement, except that, in accordance with our usual practice, we shall toll the back pay accruing to Lucille Robinson from the date of the Intermediate Report herein to the date of this

[13] *F. W. Woolworth Company*, 90 NLRB 45.

Decision and Order.[14] The quarterly periods, hereinafter called "quarters," shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting, from a sum equal to that which these employees would normally have earned for each quarter or portion thereof, their net earnings,[15] if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter.

The Trial Examiner found that the strike of the Respondents' making department employees which began on August 9, 1949, was an unfair labor practice strike, and recommended that the Respondents should be required, upon application by the making department employees, to offer to each of them reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges. However, inasmuch as the strike which commenced on or about August 9, 1949, was caused by the Respondents' refusal to bargain with the Union as the representative of *all* the production and maintenance employees in the Waycross plant, we shall order that the Respondents, upon request, shall offer reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, to *all* their employees who went on strike on or about August 9, 1949, and who have not already been reinstated to their former or substantially equivalent positions. We shall also order the Respondents to dismiss, if necessary, any persons hired on or after August 9, 1949, and who were not in the employ of the Respondents on that date. Further, we shall order that the Respondents make whole those employees who went on strike on or about August 9, 1949, and who have not previously been reinstated in the manner provided above, for any loss of pay they may suffer by reason of the Respondents' refusal, if any, to reinstate them, by payment to each of them of a sum of money equal to that which he normally would have earned as wages during the period from 5 days after the date on which he applies for reinstatement, to the date of the Respondents' offer of reinstatement, such loss of pay to be computed in the manner provided above.

We shall also order, in accordance with the *Woolworth* decision, *supra*, that the Respondents, upon request, make available to the Board and its agents all pertinent records.

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[14] *Cummer-Graham Company*, 90 NLRB No. 114.

[15] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere, which would not have been incurred but for this unlawful discrimination, and the consequent necessity of his seeking employment elsewhere. *Crossett Lumber Company*, 8 NLRB 440. Monies received for work performed upon Federal, State, county, municipal or other work-relief, projects shall be considered earnings. *Republic Steel Corporation* v. *N. L. R. B.*, 311 U. S. 7.

We expressly reserve the right to modify the back-pay and reinstatement provisions if made necessary by circumstances not now apparent.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, Rubin Brothers Footwear, Inc., and Rubin Bros. Footwear, Inc., Waycross, Georgia, and their agents, officers, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Shoe Workers of America, CIO, or in any other labor organization of their employees by discharging, laying off, or refusing to reinstate any of their employees, or by reducing the hours of their employment, or by discriminating in any other manner in regard to the hire, tenure of employment, or any term or condition of employment of any of their employees;

(b) Refusing upon request, to bargain collectively with United Shoe Workers of America, CIO, as the exclusive representative of all the production and maintenance employees at their Waycross, Georgia, plant, excluding office clericals, guards, professional employees, and supervisors as defined in the Act;

(c) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Shoe Workers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to the employees named in Appendix A, attached hereto, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole, in the manner set forth in the section entitled "The Remedy," for any loss of pay which they may have suffered by reason of the Respondents' discrimination against them;

(b) Make whole the production and maintenance employees, in the manner set forth in the section entitled "The Remedy," for any loss

of pay which they may have suffered by reason of the Respondents' discrimination against them;

(c) Offer to Essie Stevens, Julia Griffin, Lola Davis, Docia J. Seabolt, and George W. Hendrix, Jr., immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole, in the manner set forth in the section entitled "The Remedy," for any loss of pay which they may have suffered by reason of the Respondents' discrimination against them;

(d) Upon application, offer immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, to all those employees who went on strike on or about August 9, 1949, and who have not already been reinstated to their former or substantially equivalent positions, dismissing if necessary any persons hired by the Respondents on or after August 9, 1949, and make them whole for any loss of pay they may suffer by reason of the Respondents' refusal, if any, to reinstate them in the manner provided in this paragraph, by payment to each of them of a sum of money equal to that which he normally would have earned as wages during the period from 5 days after the date on which he applies for reinstatement to the date of the Respondents' offer of reinstatement, such loss of pay to be computed in the manner set forth in the section entitled "The Remedy";

(e) Upon request, bargain collectively with United Shoe Workers of America, CIO, as the exclusive representative of their employees in the appropriate unit described above, with respect to grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement;

(f) Upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due and the right of reinstatement under the terms of this Order;

(g) Post at their plant in Waycross, Georgia, copies of the notice attached hereto marked Appendix B.[16] Copies of such notice, to be furnished by the Regional Director for the Tenth Region, shall, after being duly signed by the Respondents' representatives, be posted by the Respondents immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter, in conspicuous places,

[16] In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted in the notice before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(h) Notify the Regional Director for the Tenth Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

APPENDIX A

Reditha Boggs
Martha Rolfe
Harold Spradley
Lillian Strickland
Effie Driggers
Edna Crawford
Ann Barbour
Nora Jeffords
A. J. Grimes
Irene Griffin
Winifred Thornton
W. T. Smalley
Alice Mercer
Ellen Lord
Hettie Lairsey
Joy Jackson
Gladys Spradley
Reba Thompson
Lorean Tyre
Cleo Davis
Maggie Dowling
Jessie Dowdy
Beatrice Morgan
Myrtle Prevatt
Betty Lord
Annie Taylor
Ila M. Green
Mary K. Barber
Vernice Prevatt
Mavis Mobley
Mattie Mobley
Annie Hickox
Lottie Crews
F. Lightsey
Arrie Chauncey
Goldie Drawdy
Betty R. Lee
L. Melton
Eva Tanner
Marion Sibley
Nancy Spradley
Loretta Moore
Pearl Justice
Mcie Griffin
Allen R. Griffin
Henry O. Griffis
Agnes Gunter
Joyce Evans
William Dunlap
Graham Dukes
Ruby M. Dryden
Effie Henderson
Pearl Johnson
Audrey James
Owen Carter
Myrtle Cobb
Jerry Tyre
Mildred Strickland
Claudia Hickox
Dollie Herrin
Vivian Saunders
Horace Lee
Ida A. House
Lanell Corbitt
Odell DeLettre
Dora Duggan
Edyth Dickson
Cleatis Crews
Elizabeth Craven
B. K. Cannon

N. L. Griffin
J. E. Taylor
Donald Griffin
Lucille Robinson

APPENDIX B

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT interrogate our employees in any manner concerning their union activities and membership.

WE WILL NOT threaten to discontinue operation of and move our Waycrosse plant for the purpose of discouraging membership in UNITED SHOE WORKERS OF AMERICA, CIO, or any other labor organization.

WE WILL NOT discourage membership in UNITED SHOE WORKERS OF AMERICA, CIO, or any other labor organization, by discharging, threatening to discharge, or refusing to reinstate any of our employees, or by discriminating in any other manner in regard to the hire and tenure of their employment, or any term or condition thereof.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist UNITED SHOE WORKERS OF AMERICA, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

WE WILL OFFER to Essie Stevens, Julia Griffin, Lola Davis, Docia J. Seabolt, and George W. Hendrix, Jr., immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges; and we will make each of them whole for any loss of pay suffered as a result of our discrimination against them.

WE WILL OFFER, to the extent that such action has not already been taken, to the following named employees, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and

privileges and make them whole for any loss of pay suffered as a result of our discrimination against them.

Reditha Boggs	Mavis Mobley
Martha Rolfe	Mattie Mobley
Harold Spradley	Annie Hickox
Lillian Strickland	Lottie Crews
Effie Driggers	F. Lightsey
Edna Crawford	Arrie Chauncey
Ann Barbour	Goldie Drawdy
L. Melton	Betty R. Lee
Eva Tanner	Henry O. Griffis
Marion Sibley	Agnes Gunter
Loretta Moore	Joyce Evans
Pearl Justice	William Dunlap
Mcie Griffin	Graham Dukes
Allen R. Griffin	Ruby M. Dryden
Nancy Spradley	Effie Henderson
Nora Jeffords	Pearl Johnson
A. J. Grimes	Audrey James
Irene Griffin	Owen Carter
Winifred Thornton	Myrtle Cobb
W. T. Smalley	Jerry Tyre
Alice Mercer	Mildred Strickland
Ellen Lord	Claudia Hickox
Hettie Lairsey	Dollie Herrin
Joy Jackson	Vivian Saunders
Gladys Spradley	Horace Lee
Reba Thompson	Ida A. House
Lorean Tyre	Lanell Corbitt
Cleo Davis	Odell DeLettre
Maggie Dowling	Dora Duggan
Jessie Dowdy	Edyth Dickson
Beatrice Morgan	Cleatis Crews
Myrtle Prevatt	Elizabeth Craven
Betty Lord	B. K. Cannon
Annie Taylor	N. L. Griffin
Ila M. Green	J. E. Taylor
Mary K. Barber	Donald Griffin
Vernice Prevatt	Lucille Robinson

WE WILL MAKE WHOLE all production and maintenance employees for any loss of pay suffered by them as a result of our discriminatory reduction of hours of work during the period from

September 27, 1948, or thereabout to December 22, 1948, or thereabout.

WE WILL BARGAIN collectively upon request with UNITED SHOE WORKERS OF AMERICA, CIO, as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and if an agreement is reached embody it in a signed agreement. The bargaining unit is:

All production and maintenance employees excluding office clericals, guards, professional employees, and supervisors.

WE WILL upon their respective applications, offer to those employees who went on strike on or about August 9, 1949, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, dismissing, if necessary, all persons hired on or after August 9, 1949, and we will make each employee whole for any loss of pay suffered by him as a result of our failure to reinstate him upon his application.

RUBIN BROTHERS FOOTWEAR, INC.,
RUBIN BROS. FOOTWEAR, INC.,
Employer.

Dated---------- By ----------
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT

Willis C. Darby, Jr., Esq., for the General Counsel.

Wilson, Bennett, Pedrick and Bennett, by *E. Kontz Bennett, Esq., L. E. Pedrick, Esq.*, and *John W. Bennett, Jr., Esq.*, of Waycross, Ga., for the Respondents.

James R. Cochran, of Atlanta, Ga., for the Union.

STATEMENT OF THE CASE

Upon charges duly filed by United Shoe Workers of America, CIO, herein called the Union, the General Counsel of the National Labor Relations Board[1] by the Regional Director for the Tenth Region (Atlanta, Georgia), issued a complaint dated June 6, 1949, and an amended complaint dated June 15, 1949, against Rubin Brothers Footwear, Inc., and Rubin Bros. Footwear, Inc., referred to herein jointly as the Respondents, alleging that the Respondents had engaged in and were engaging in unfair labor practices within the meaning of Section 8 (a) (1), (3), and (5), and Section 2 (6) and (7) of the National Labor Relations Act as amended, 61 Stat. 136, herein called the Act. Copies of the charges, the complaint, the amended complaint, and notice of hearing were duly served upon the Respondents and the Union.

[1] The General Counsel and his representative at the hearing are herein called the General Counsel, and the National Labor Relations Board is called the Board.

With respect to the unfair labor practices, the amended complaint alleged in substance that the Respondents (1) on various dates between September 29, 1948, and April 22, 1949, discriminatorily discharged 5 named employees,[2] and thereafter refused to reinstate them because of their membership in and activities on behalf of the Union and because they engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection; (2) on various dates between September 28 and October 15, 1948, laid off some 73 named employees[3] and thereafter refused to reinstate them, and from on or about September 27, 1948, to on or about December 22, 1948, reduced the hours of work of all employees of the Waycross plant because of their membership in and activities on behalf of the Union and because they engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection; (3) from on or about October 26, 1948, refused and continue to refuse to bargain collectively with the Union, the duly designated representative of a majority of the employees in an appropriate unit; (4) from on or about September 1, 1948, to the date of the amended complaint by their officers, agents, and employees, committed, authorized, instigated, and acquiesced in (a) urging, threatening, and warning employees to refrain from assisting, becoming members of, or remaining members of the Union, (b) interrogating employees concerning their union activities and membership, (c) threatening to discharge any employee who became a member of, or remained a member of the Union, (d) threatening to discontinue operation and move the Waycross plant if the union's organizational campaign was successful, (e) sponsoring an antiunion petition among the employees, (f) keeping under surveillance union meetings and activities of employees, and (g) threatening to cease making stock shoes if the employees assisted, became members of, or remained members of the Union; and (5) by the foregoing conduct engaged in violations of Section 8 (a) (1), (3), and (5) of the Act.

Separate answers, duly filed by each Respondent, in part admitted certain allegations of the complaint, but denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held on various dates between June 21 and September 8, 1949, at Waycross, Georgia, and Memphis, Tennessee, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel and the Respondents were represented by counsel and the Union by an official representative. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence pertinent to the issues was afforded all parties.

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[2] Essie Stevens on September 29, 1948. Julia Griffin, who at the time of the hearing was married and testified under the name of Crews, but who will be referred to herein as Griffin, on September 30, 1948. Lola Davis on November 8, 1948. Docia J. Seabolt, referred to in the amended complaint as Dora J. Seabolt, on April 8, 1949. George W. Hendrix whose discharge in the amended complaint is dated January 21, 1949, was actually discharged on April 22, 1949. By motion granted at the hearing the date of Hendrix's discharge was corrected to read April 22, 1949.

[3] The names of the employees and the respective dates when they were laid off are listed in Appendix A hereof. By stipulation set forth in the record it was agreed between the parties that all the employees listed on Appendix A, attached to the Complaint, were laid off with the exception of L. R. Strickland, M. Strickland, Roy L. Griffin, Lucille Robinson, M. E. Dial, and Ralph Thornton. The remainder of the employees listed on Appendix A, attached to the Complaint, were laid off on or about the date set opposite their names. In accordance with my interpretation of the stipulation, Appendix A attached to this report is a revised appendix which does not include the above set forth names.

At the opening of the hearing, counsel for the Respondents moved that Rubin Bros. Footwear, Inc., be stricken as a party respondent and for grounds asserted (1) that the Regional Director for the Tenth Region of the Board is without jurisdiction or authority as a matter of law to make Rubin Bros. Footwear, Inc., a New York corporation, a party respondent in this proceeding; (2) that no legal service had been perfected on this party respondent; and (3) that neither the charges nor the complaint nor the amended complaint allege that this Respondent exercised any direction or control over the personnel and employees of Rubin Brothers Footwear, Inc., a Georgia corporation. It was admitted in the answer and at the hearing that the Georgia corporation is a wholly owned subsidiary of the New York corporation. A majority of the officers of the two corporations are the same. The fiscal policies including payments of wages and all bills are directed and controlled by the New York corporation. The motion was denied. *N. L. R. B.* v. *Don Juan, Inc., and Don Juan Co., Inc.*, 178 F. 2d 625 (C. A. 2). I also denied motions to dismiss the complaint on the ground that the Congress of Industrial Organizations, with which the Union is affiliated, has not complied with the filing requirements of Section 9 (f), (g), and (h) of the Act. It has been consistently held by the Board that compliance is a matter for administrative determination, and is not litigable by the parties. *Northern Virginia Broadcasters, Inc.*, 75 NLRB 11; *Highland Park Manufacturing Company*, 84 NLRB 744; *Anchor Rug Mill*, 85 NLRB 764; *Pauls Valley Milling Company*, 82 NLRB 1266. Motions by the General Counsel for a bill of particulars with respect to paragraph 10 of the Rubin Brothers Footwear, Inc. answer, and that specified paragraphs of the answer be stricken were denied.

During the course of the hearing on September 8, 1949, the General Counsel moved that the amended complaint be further amended so as to allege that the strike of Respondents' making department employees which started on or about August 9, 1949, was caused and prolonged by the Respondents' unfair labor practices. The motion was granted. The Respondents' amended answers duly filed admitted the strike, denied that it was caused by their unfair labor practices, and affirmatively alleged that the strike was illegal and called in an effort to restrain the Respondents from pursuing their rights in a regularly constituted hearing and further was intended as a demonstration of force while Respondents were attempting to have their rights adjudicated by law. A stipulation entered into by all of the parties regarding the above-noted amendments to the amended complaint was subsequently received, admitted into evidence, and made a part of the record in this proceeding. The parties having advised the examiner that they desired to offer no further evidence bearing upon the issues, the hearing was closed by Order dated October 6, 1949. A motion by the General Counsel to conform the pleadings to the proof is hereby granted.[4] Oral argument was waived. The parties were advised of their right to file proposed findings of fact, conclusions of law, and briefs. On November 15, 1949, the General Counsel and counsel for the Respondents filed briefs with the undersigned. A reply brief was received from counsel for the Respondents on December 12, 1949.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

[4] This motion was included in the stipulation referred to hereinabove, and was not objected to by any of the parties.

FINDINGS OF FACT

I. BUSINESS OF THE RESPONDENTS

Rubin Bros. Footwear, Inc., is a corporation duly organized under and existing by virtue of the laws of the State of New York, with its principal office at New York City, New York.

Rubin Brothers Footwear, Inc., is a Georgia corporation with its principal office and place of business at Waycross, Georgia.

The Georgia corporation is a wholly owned subsidiary of the New York corporation. The New York corporation finances all operations of the Waycross plant and maintains a sales staff to sell the entire output of manufactured shoes. Purchases of leather and supplies for use at the Waycross plant are made by I. Rubin, vice president of the New York corporation, who holds a similar position with the Georgia corporation.

It was stipulated at the hearing that in the course of the Respondents' business operations during the calendar year 1948, which period is representative of all times material herein, raw materials consisting principally of leather valued in excess of $500,000, were purchased, more than 90 percent of which was shipped to the Waycross plant from points outside the State of Georgia. During the same period finished footwear was produced by the Respondents valued in excess of $500,000, more than 90 percent of which was sold and shipped to customers outside the State of Georgia.

The Respondents admit and it is hereby found that at all times covered by the amended complaint, they were engaged in interstate commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

United Shoe Workers of America, CIO, is a labor organization admitting to membership employees of the Respondents.

III. THE UNFAIR LABOR PRACTICES [5]

Background and major issues

The Respondents started operating their Waycross plant in 1935. Prior thereto they operated plants in New York City, Long Island City, New York, and Zanesville, Ohio.[6] Jack Rubin, comanager of the Waycross plant since 1944, had previously been in charge of Respondents' other plants. Jack O'Brien, foreman in the Respondents' Zanesville plant from 1932 to 1937, and foreman of the Waycross making department from 1937 to 1945 [7] testified without denial that sometime during the period from 1934 to 1937, Jack Rubin told him that he would board up the windows before he would ever recognize the Union in the Zanesville plant. Clifford Howison, foreman of the cutting department since 1944, to which position he was transferred from the Zanesville plant where he

[5] While some consideration is given below to such matters as credibility of witnesses and conflicts in the evidence, for the most part, the findings in this section are made upon evidence which is undisputed, or is at variance only as to minor details, or are made without explanation upon the preponderance of the reliable, probative, and substantial evidence in the record considered as a whole. It should be noted that there is considerable evidence, some of it highly contradictory in nature, concerning which I deem it either unnecessary to make findings in more detail than appear below, or to make any findings at all.

[6] The Zanesville plant was in operation until 1942.

[7] O'Brien was transferred from the Zanesville plant to the Waycross plant in 1937.

was the cutting department foreman from 1931, admitted that although efforts were made to organize the employees, there never was a union in the Zanesville plant. During the height of the Union's organizational campaign in the fall of 1948, which will be discussed in detail hereinafter, Foreman Lonnie Youmans, in charge of the fitting room, while questioning employee Henry Okella Griffis about union activities at the plant, said: "I will tell you one thing; that is the reason they moved from Zanesville down here, is to get out of the union. . . ."

In 1944, employee Ruth Le Blanc was suspected by management of attempting to organize a union in Waycross, as testified to by Jack O'Brien. He immediately advised I. Rubin in the Respondents' New York office of this. I. Rubin came to Waycross and ordered O'Brien to discharge Le Blanc on the pretext that she was doing a bad sole-laying job.

Early in 1948, the American Federation of Labor attempted unsuccessfully to organize the Waycross employees.

The union's initial attempt to organize the Respondents' employees was on or about September 7, 1948, when organizer James Cochran talked with employee William Thrift, Jr., at the latter's home and asked for the names of employees who might be interested in union organization.

On the following morning, September 8, Thrift's foreman, Albert Dowling, asked him if he had a visitor the night before. Thrift admitted that Cochran had been to his home and that they had talked about organized labor.

On September 14, Cochran again visited Thrift's home and left a union membership book with Thrift's wife, Marcella, also an employee of the Respondents, so that she could solicit employees to union membership.[8]

On the following morning, September 15, Dowling remarked to Thrift, "I understand the union man was out calling on you again."

The union organizational drive gained momentum and there was considerable discussion and argument, engaged in by the employees and management regarding its pros and cons and what management would do if the campaign was successful, which is the subject of further consideration in a succeeding section of this report.

By wire dated September 28, the New York office through I. Rubin advised Waycross to discontinue the manufacture of all stock shoes with the result that from September 28 to October 15, some 73 employees were laid off. The Respondents contend that on September 28 the price of leather was "firm" with an expected price decline and since they already had a large stock of shoes on hand they were economically justified in reducing their complement of production employees.

Employees Essie Stevens and Julia Griffin, who were active in soliciting other employees for union membership, were discharged on September 29 and 30, respectively, allegedly for cause.

On October 7, the Union filed its initial unfair labor practice charge, a copy of which was served on the Respondents. On October 11, an amended charge was filed and copy served on the Respondents alleging the layoffs to have constituted unfair labor practices. Following the receipt of the unfair labor practice charges, the Respondents consulted with their legal counsel and it was determined to reemploy the laid-off persons and reduce the working hours of all their production and maintenance employees, in order, as they contend, to spread the work among all the employees.

The employees continued their organizational activities, and on November 15 the Union filed its petition for certification of representatives in Case No. 10–RC–

[8] Thrift is blind and could not assist in soliciting.

430. In the interim, on November 8, employee Lola Davis was discharged because her union activities in the plant allegedly resulted in neglect of her work and interference with the work of her fellow employees.

On March 18, 1949, in an election of the Respondents' production and maintenance employees by secret ballot conducted pursuant to a Decision and Direction of Election issued after a hearing was duly held on January 20, 1949, a majority of the employees designated the Union as their collective bargaining representative. The Union's various requests of the Respondents to bargain collectively in respect to rates of pay, wages, hours of employment, and other conditions of employment were at all times refused on a technical ground which will be taken up in detail hereinafter.

After the election described above, employee Docia J. Seabolt, the union shop steward in the packing department, and employee George W. Hendrix, the union shop steward in the finishing department, were discharged on April 8 and April 22, 1949, respectively, again on the grounds of cause.

On August 4, 1949, while the hearing in this matter was in progress, the union once more requested the Respondents to meet with it to negotiate a contract covering among other things union recognition. The Respondents persisted in their refusal of the Union's request and on August 9 the Respondents' making department employees ceased work concertedly on the grounds that the strike was caused by the Respondents' unfair labor practices.

Thus the major events in issue are the alleged activities of management interfering with the employees' union activities, the five discharges, the layoffs, the reduction of hours of work of all production and maintenance employees, the refusal to bargain, and the strike.

The inception of organizational activities; interference, restraint, and coercion

a. Interrogation as to union activities; the coercive threats

The Union's organizational activities commenced on the night of September 7, 1948, when James Cochran, union organizer, called at the home of William Thrift, Jr., a last puller in the finishing department, and endeavored to obtain Thrift's assistance to talk to the Respondents' production and maintenance employees about the Union. Cochran asked Thrift to supply him with the names of employees who would be interested in the organization of a union at the plant.

The following morning, September 8, Foreman Dowling came to Thrift's place of work in the plant and inquired if he had a visitor the night before. Thrift asked Dowling if he was referring to the union man. Dowling replied that he was. Thrift admitted that Cochran had been to his home, that they talked about the Union and matters concerning organized labor.

On the night of September 14, Cochran again visited Thrift's home, at which time Thrift signed a union membership card. Cochran left a union application book with Marcella Thrift [9] and enlisted her aid to solicit employees for union membership.

The following morning, September 15, Foreman Dowling approached Thrift in the plant and said "I understand that union man has been back to your house again." Thrift admitted Cochran had been there.

[9] Marcella Thrift is the wife of William Thrift. She had been an employee in the Respondents' plant since 1939.

Toward the end of the week Marcella Thrift's foreman, Lonnie Youmans, inquired if she heard about the Union and wanted to know what the girls thought about it. Youmans told Marcella Thrift that she could help keep the Union out of the plant by advising the girls, whenever she saw them talking in groups, that she did not think a union "would work" at the plant because it would mean the loss of jobs to many of them.

On September 20, Mary Ruth Bryant, the Respondents' personnel manager, approached Marcella Thrift at her machine and said: "Marcella, what's this I hear about you and Mr. Thrift? . . . About the union." Mary Ruth Bryant remarked that Jack Rubin had a lot of confidence in the Thrifts. She requested Marcella Thrift to talk to Jack Rubin in his office about the Union, since he would "hate mighty bad" if someone else told him of their activities. As requested, Marcella and William Thrift met Jack Rubin in the latter's office after they finished their day's work;[10] present also was Mary Ruth Bryant. After some lengthy conversation regarding union leaders, the salaries paid them, and the assessments workers had to pay out of their salaries, the Thrifts and Jack Rubin left the latter's office and went to the stockroom. Jack Rubin pointed out the shoes already in stock, mentioning the amount of money the Respondents had tied up in these shoes. He stated that the Respondents would continue to stock shoes as long as there was storage space. Pulling a pair of Texas boots out of a case of shoes, Jack Rubin said that he knew that was good stock to make and was readily salable because the Acme Shoe Company, a competitor, had built a special plant to manufacture such shoes exclusively. Jack Rubin then said, "Mrs. Thrift if you and Mr. Thrift stick with me you won't lose any time from work. If I don't have anything else for you to do you can wash windows and Mr. Thrift can cut strands off the rollers on the racks." Again referring to the stock shoes he expected to continue manufacturing, Jack Rubin told Marcella Thrift that she did not have to worry about work as it was his intention to keep a good stock of Texas boots.[11] He told the Thrifts they were two of his best workers, that he was aware of the fact he was indebted to them, and that if they aligned themselves with management, they would be paid "not with promises but with money." But, he warned, he was not going to run the plant with a union there. He stated he would go back where he could get skilled labor if he had to pay union wages, particularly since he did not have a family and ". . . was not going to worry his brains out to run a plant." Jack Rubin reiterated that he would close the plant and go back to New York to live with his sisters since he already had more money than he knew what to do with. He mentioned also that if he left Waycross, Clifford Howison, the cutting department foreman, the only man other than himself who knew how to run the plant, would also leave. Returning again to the subject of the Respondents' intentions regarding the output of shoes in the near future, Jack Rubin told the Thrifts that the plant was going to manufacture 3,000 dozen shoes per week, that he would not hire any more production employees unless it was shown that the then complement of workers was unable to cope with such a schedule. As they were leaving the plant, Jack Rubin stated that the employees would be worse off when organized since they would not be taking their orders from him but rather from the union. He added he would take care of the employees who played along with him "till this [the union organizational campaign] died down" and those employees who did not

[10] The Thrifts had left the plant when Marcella spoke to her husband about Mary Ruth Bryant's conversation that afternoon. They decided to go back to see Jack Rubin.

[11] Marcella Thrift's operation included vamping and sewing boxings on Texas boots, riding boots, and majorettes.

go along with him, "well, they will be sorry." The conversation between Jack Rubin and the Thrifts lasted 2 hours and 40 minutes. Jack Rubin, who sat at Respondents' counsel table throughout the hearing in this proceeding, was not produced as a witness by the Respondents.[12] Thus the mutually corroborative testimony of William and Marcella Thrift stands undisputed. I credit their testimony that Jack Rubin in substance made the remarks attributed to him as set out above.

Marcella Thrift testified that Jack Rubin came over to her machine about 2 weeks later and told her he was going to start again on a few cases of Texas boots. He asked how many cases she could sew in a day. When she advised that she did not know because she had not sewn them for so long, he said he would start at six cases a day, and that with the manufacture of majorettes and riding boots she would be kept busy. He told her that he could not talk with her too much as it would appear suspicious to the other girls, but he implored "you stick with me, and you won't be sorry."

The Respondents early in the Union's organizational campaign made efforts to track down those employees who were interested. Thus Henry Okella Griffis, a maintenance man in the Respondents' employ since 1945,[13] testified that on or about September 17, at about 6 : 30 while he was working overtime, he passed Jack Rubin's office and heard him say to Foreman Lonnie Youmans, Albert Dowling, Vasco Sapp, Alton Bryant, and Calvin Thomas, who were congregated there, "I don't know whether there is anything to it, or not, but I want you to get around amongst the people and find out if there is."

Griffis joined the Union on September 14. About a week later, Jack Rubin talked to him while he was working at a machine regarding his wages and wanted to know if he was satisfied. Griffis replied that he was not. Several nights later Jack Rubin told Griffis he had been thinking over their recent conversation and advised him to look for another job. Griffis asked Jack Rubin why he did not "come out" with it and tell him it was about the Union, whereupon Jack Rubin said, "Kelly, don't get me wrong. I haven't even thought about a union, nothing like that." Jack Rubin mentioned that some of the operators had complained that Griffis was hard to get along with the last few days. They talked for several minutes and Jack Rubin said, "Kelly, I tell you, before I would work for the C. I. O., I will be God damned if I won't close down and go back home." On their way down the stairs of the plant Jack Rubin told Griffis to forget about what happened and start over anew, Griffis replied that it was all right with him. A day or two later, Jack Rubin again spoke to Griffis in the plant saying that since this was a free country, if Griffis wanted the Union he could go right ahead, join it, and work for it, but he would rather Griffis left it alone. Jack Rubin asked Griffis how much it would take to satisfy him and exactly what he wanted. Griffis replied that all he was asking was $1 per hour.[14]

A few days after the last-noted conversation Griffis testified that his foreman, Lonnie Youmans, came over to a machine which he was repairing and said, "Kelly,

[12] "The well known rule is applicable . . . that when a party produces such evidence as it is in his power to produce, its probative effect is enhanced, by the silence of his opponent and also where the party on whom rests the burden of evidence as to a particular fact has the evidence within his control and withholds it, the presumption is that such evidence is against his interest and insistence." (*N. L. R. B.* v. *Ohio Calcium Co.*, 133 F. 2d 721 (C. A. 6)).

[13] Griffis was in the armed services from June 1946 to November 1947. He returned to work for the Respondents in December 1947. He is also referred to in the record and herein as Kelly.

[14] Griffis was receiving 80 cents per hour.

I understand there is a union going around; at least remarks of a union going around town." Youmans remarked that a union might be good or bad, depending on how it is run. As they were leaving the plant, Youmans said, "I will tell you one thing; that is the reason they moved from Zanesville down here, is to get out of the union. Before they will work under a union down here, they will pack up and go back up there. They have to pay freight on their leather down here, and then they have to pay freight on their shoes to ship them back. Before they do that, they will just pick up and go back." Youmans ended the conversation by repeating that a union might be good, might be bad, but he would not say.

Reavis Dowling, a thread laster in the Respondents' employ since 1936, testified that on or about September 14, employee Oscar Sapp remarked that he wished there was a union in the plant. Vasco Sapp, their foreman and brother of Oscar, overheard their conversation and asked Dowling if a union had been trying to organize the plant. Dowling answered that the A. F. of L. had made efforts in the past but that he had not heard anything about it for 3 or 4 months. Vasco Sapp then turned to Oscar and said, "I will fire your damned ass if I hear you mention the union in here again." On Saturday morning, September 25, Dowling was in a booth in the men's washroom when his Foreman Vasco Sapp and Foreman Albert Dowling and J. B. Whidden (also known as Cowboy) walked in and engaged in a conversation about the Union. Dowling overheard Sapp tell the other foremen that a union was trying to organize the plant's employees; that Jack Rubin would not run the factory if the union drive succeeded; that the Respondents would close the plant and go back north before union wages would be paid to make stock shoes because they were not making enough money on stock shoes. Albert Dowling told the other foremen that a union man had the names and addresses of all of the Respondents' employees and had visited one of the men working in his department.

On or about September 29, Foreman Sapp walked over to Reavis Dowling in the plant and told him that all of the female employees had joined the Union and it was up to them to keep the Union out of the plant. Foreman Sapp added, "I don't want to lose a damn good job on account of the Union. I have been working for 13 years." The following day Foreman Sapp asked Reavis Dowling what he thought about signing "a paper to keep the union out of the plant." Dowling told Foreman Sapp that he questioned the legality of such a document and asked for a copy of it so that he might consult the district attorney's office, and if it was legal he might sign. Foreman Sapp refused this request and Dowling refused to sign. Early in October Foreman Sapp approached Dowling in the plant and asked: "How do you reckon Mr. Rubin is going to feel when he gets back from New York tomorrow and finds out you been working with the union man? I imagine he is going to feel like a two-cent piece with a hole in it, don't you?"

On a Friday evening in early October,[15] Cochran, another union organizer, Coker, and several of Respondents' employees including Reavis Dowling, met at the latter's home. The following morning, Saturday, Foreman Howison came over to where several thread lasters were waiting for work and inquired if Dowling had gone to the union meeting the night before.

Lola Davis, a fitting room employee with the Respondents since 1936, whose alleged discriminatory discharge will be discussed in detail hereinafter, testified that about the first part of September Foreman Youmans came to her machine and inquired if she heard anything about the employees organizing into a union.

[15] The exact date of the meeting is not revealed in the record.

Upon Davis' reply that she had not, Youmans told her that an effort was being made to organize the employees and if anyone solicited her she should "try to discourage it."

Julia Griffin testified that on or about September 15,[16] Foreman Youmans came over to employee Lucille Robinson's machine while she was there and touching them both on the shoulder, said "Girls, do you have your cards?" They asked "What cards?", and Youmans said "Union cards." They replied that they did not have union cards. Youmans then asked them if they knew that the Union was making an effort to organize the employees, and added, "If they organize a union here, the factory will move back up North. The reason we came down here was so we did not have to have a union in the plant. It would be cheaper to move back up there, because we have to pay the expense of getting the leather and the materials down here." Lucille Robinson corroborated Griffin's testimony. She testified also that that same afternoon or the next day, Youmans asked her to let him know of any employee who was taking a part in union activities.

Lollie M. Crews, an employee in the cutting department since August 1947, signed a union application card on September 23. She testified that about a week later Foreman Howison asked if she joined the Union, to which she replied that she had not. A day or two later Howison asked if she knew anything about the union around the plant. Crews replied that she did not know anything about it and that she had not signed a union membership card. Within a day, Howison told Crews that he heard she was the only employee who had paid her initiation fee to the Union. Crews then admitted that she had joined. Howison asked Crews to let him see her union receipt,[17] but not to let anybody see her hand it to him. When Crews gave Howison the receipt, he said, "You won't need this any more, will you?" Crews replied, "Well if the union don't come in, I will get my dollar back out of it." Howison closed the conversation by requesting Crews not to tell anyone about his asking for her union receipt.

Shortly before she joined the Union on September 24, Foreman Youmans asked Martha G. McQuaig, an employee in his department since 1942, if she had seen any union cards in the plant. Youmans told McQuaig that he wished he could find out which employees had the cards. He stated further that the Respondents were manufacturing stock shoes in order to give work to the employees, that it was not absolutely necessary to make stock shoes and that the Respondents could close the plant at any time.

On the day leaflets announcing a union meeting the night of October 11, were distributed to the employees at the plant entrance, Youmans asked McQuaig if she would attend the meeting to find out what was going on there. The next morning Youmans asked if she went to the "dance." She replied that she had gone to the "chicken supper."[18]

On Saturday morning, September 25, a number of employees were working extra time. Foreman Whiddon approached Earnie Howell at his work bench and stated that he did not think a union in the Respondents' plant would be a good thing for the employees. Whiddon, however, did not end the conversation with this expression of his opinion, but went on to tell Howell that the employees worked on a piecework basis and the Respondents' manufacture

[16] Griffin testified that the conversation took place about 2 weeks before her discharge on September 30. The alleged discriminatory discharge of Griffin will be discussed in a later section of this report.

[17] Crews testified that she was given a duplicate pink slip when she signed the application.

[18] By "chicken supper" McQuaig testified that she referred to the union meeting.

consisted of a good percentage of stock shoes; that if the Union's organizational drive was successful, the Respondents would manufacture only order shoes and the volume of work would be cut down. Whiddon also told Howell that even though the third floor employees had joined the Union, it could be kept out of the plant if the second floor employees did not join.

Carroll Bennett, a thread laster in the Respondents' employ since 1943, joined the Union on September 26. He testified that soon thereafter his foreman, Vasco Sapp, came to his machine and asked if he would sign a petition which set forth that the employees were satisfied with conditions and did not want to have any part of the Union.[19] Bennett refused. Sapp told Bennett that if the Union came into the plant, neither he nor Bennett nor anyone would have jobs, that Jack Rubin had been advised by J. B. Rubin of the Respondents' New York office that the plant would close if the union drive succeeded.

Annell Stevens, a sister-in-law of Essie Stevens referred to hereinabove, was employed in the plant office in September 1948. She did not join the Union. She testified that on the day Essie Stevens was discharged, Mary Ruth Bryant came to her and asked if she was a union member.

Gladys Spradley, a coworker of Essie Stevens in the cutting department, was also questioned by Mary Ruth Bryant concerning her membership in the Union on the day Stevens was discharged. Spradley testified further that on or about October 1, Howison asked if she had joined the Union and remarked that "Essie Stevens did not know what she was getting into when she signed us all up."

About September 20, Foreman Sapp told John Henry Justice at his machine that he thought the employees were doing the wrong thing in joining the Union, that they were just signing themselves out of jobs. He stated that the Respondents would close the plant and go back to New York and therefore it would be better to leave the Union alone. On October 12 Justice was wearing a union pin while at work. Foreman Sapp approached him and said that the union pin would not get him his rations.

Foremen Vasco Sapp and Calvin Thomas made it practically a daily occurrence to talk to James A. Craven, an active union participant, about the Union. On or about September 27, Sapp told Craven that the "union would not work" in the plant. Sapp said that Jack Rubin had received a telephone call from J. B. Rubin and I. Rubin in New York to the effect that the Respondents would close their plant and go north before they would pay union wages. Craven testified that Foreman Thomas told a group of the employees, of which he was one, that they were doing the wrong thing and "just costing themselves their jobs and his as well." Thomas added, "you don't think Rubin Brothers would stay down here and work farm hands when they could go up North and get skilled labor."

Charles Crawford, a heel trimmer for the Respondents since 1943, testified that about October 1, Foreman Dowling questioned him regarding the union membership of employee Fred Ammons.

About September 27, Foreman Whiddon approached Noah Griffin in the plant and said "they are trying to get a union in here. We don't want it here. Mr. Rubin says he is going to shut down if it comes in." Whiddon told Griffin that he had told the same thing to some of the other men under his supervision on Saturday. Whiddon then inquired if the union man had seen Griffin, and assured him that he would.

[19] The circulation of an antiunion petition will be taken up separately and in more detail in another section of this report.

On September 27, Foreman Howison came to Mattie Mobley's machine stating he had heard that some of the girls in the cutting department were getting the signatures of employees to join the Union. Howison asked Mobley if she had heard anything about it. Upon Mobley's negative reply, Howison stated that the employees have the right to join the Union if that is their wish, but if the union drive was successful the Respondents would move the plant back north where they could obtain experienced help. The following day Howison again stopped at Mobley's machine and inquired if Essie Stevens had asked Mobley to join the Union. Howison said that it was rather funny that she had not, because she had signed up other employees in the cutting department. He then remarked that goings-on in the plant could not be kept secret. On the morning of September 28, Essie Stevens was helping Mobley count straps at the latter's work bench. Assistant Foreman Raymond Morris asked Mobley if Stevens was trying to get her to sign up with the Union.

About the middle of September, Foreman Albert Dowling asked Lloyd Sapp[20] if he had heard anything "about this communist business" that was going on in the plant. When Lloyd Sapp replied that he had not, Foreman Dowling wanted him to know before he became involved in union activities, that any employee who had anything to do with the Union would be fired; furthermore, that if the union drive was successful, Jack Rubin said he would put a lock on the door and go back north. A few days later, Foreman Dowling asked Lloyd Sapp if he was signing up employees into the Union. On another occasion Foreman Dowling, in the company of Foreman Sapp, came over to Lloyd Sapp's machine and accused Lloyd of having a lot to do with the Union. Vasco asked Lloyd if he had, then told him that he understood from a reliable source that he was working with the Union.

About September 18, Foreman Dowling told John Henry Driggers that the Union was organizing the employees and that he did not want the men under his supervision to join. Several days later Foreman Dowling asked Driggers if he was "in this mess," commenting that both he and Jack Rubin thought highly of Driggers and did not want him to become involved. On another occasion, while Foreman Dowling was trimming a shoe at Driggers' machine, Foreman Sapp came over and asked Foreman Dowling if Driggers was "all right." Dowling replied that he did not know because Driggers never said whether he did or did not join the Union.

About the middle of September Foreman Sapp told Edward Fowler at his machine that if he thought anything about his job he had better leave the Union alone. In the same conversation, Foreman Sapp stated that one of the New York Rubins told Jack Rubin that if the people in Waycross wanted to join, to let them have the Union, close the plant and go back to New York where they could get shoemakers.

b. The antiunion petitions

Early in October several employees circulated petitions in the plant during working hours. The petitions, which were informal and written on sheets of scratch paper, bore the following or similar headings:

I do not care to have anything to do with the union whatsoever.

Thrift was solicited to sign the petition by employee Edgar Chauncey. After he signed, he heard Chauncey tell Foreman Dowling that another employee

[20] Lloyd is a brother of Foreman Vasco Sapp.

told him (Chauncey) he would get into trouble for circulating the petition and that he had better stop. Dowling told Chauncey to send to him the next employee who said anything like that, and assured him of Respondents' support in case of any trouble.[21]

Robert Higginbotham testified that Foreman Dowling approached him in the plant and requested him to take a pad of scratch sheets around to the various employees and have each one write "I don't want any part of the union" on the sheet and sign his or her name. Dowling further instructed Higginbotham to caution the employees that they would lose their jobs if they refused to sign. Claudia Hickox and Odell de Lettre were among others who signed the petition after Higginbotham gave them Dowling's message. Hickox stated she saw Foreman Dowling hand the scratch pad to Higginbotham before the latter spoke to her. De Lettre testified that Dowling was about 20 feet away looking at them when Higginbotham talked to her about signing the petition.

Julian Dial, a witness called by the Respondents, testified on cross-examination that Foreman Dowling asked him and John Lord, another employee, to circulate among the employees of the fitting department with the scratch pads to get them to put down in writing over their signatures that they did not "want any part of the union." Vernon Dial, an edge trimmer in the fitting department, testified that his brother, Julian, solicited him to sign the petition and told him that he was circulating it among the employees upon the instructions of Foreman Dowling. Julian Dial also presented the petition to George Hendrix who refused to add his signature. Hendrix credibly testified without denial that as he and Julian Dial were talking about the petition, Foreman Dowling walked by them and told Dial not to insist that Hendrix sign. Foreman Dowling denied that he requested Dial to solicit the employees of his department with the antiunion petition. He testified that only John Lord went to the employees with the petition and that he had taken it away from him. Lord testified that before the petition incident Foreman Dowling inquired if he had joined the Union and he told him that he had not. Several days later, Dowling, according to Lord, brought him a pad of scratch sheets and told him to take it to the employees of his department and one other department to have them write "I don't want anything to do with the union" and sign their names. Lord stated he carried out Dowling's instructions, obtained a number of signatures but that after a while Dowling told him to stop circulating the petition and took it away from him. Thereafter Dowling asked if Lord would sign a statement for him. Lord acquiesced and was told to see Mary Ruth Bryant after working hours. Lord, in a signed affidavit dictated to Mary Ruth Bryant which she wrote out in longhand, stated that the petition was circulated of his own free will and he claimed sole responsibility for it. At the hearing Lord testified that he signed the affidavit to help Foreman Dowling, but its contents were not true. Foreman Dowling's denial as hereinabove noted is not credited. In view of the conflict between Lord's testimony and the affidavit which he apparently voluntarily signed for the Respondents, no finding is made that Dowling directed Lord to circulate the petition. However, I find, based upon Dial's testimony which I credit and which is supported by the similar testimony of Lord, that Foreman Dowling inspired the circulation of an antiunion petition among the employees while they were at work.

[21] Although Thrift is blind, he testified that he recognized the voices of Chauncey and Dowling, having spoken to both of them over a 4-year period, and they were talking very close to his place of work. Thrift's testimony stands undenied and is credited.

The circulation of the antiunion petition was not confined to the employees of Foreman Dowling's department. Reavis Dowling refused to sign upon Foreman Vasco Sapp's request. James Woodrow Wilson, a thread laster, testified that Foreman Vasco Sapp told him "it would mean his job" if he persisted in his refusal to sign.

Cutting department employees were solicited to sign the petition in plain view of their supervisors. Gladys Spradley testified that employees Ann Hickox and Grace Kirkland told her if she did not sign, she would not have any more work and the plant would be shut down. While the employees were thus engaged in conversation regarding the petition, Foreman Howison was talking to Jack Rubin about 15 feet away.[22] Lollie Crews was advised by Hickox that she was circulating the petition for Foreman Howison. Mattie Mobley, upon being solicited to sign the antiunion petition by Hickox, was told that Jack Rubin "wants to see who is part of the union and who is against it." Cutting department Assistant Foreman Raymond Morris admitted that he saw Hickox circulating the petition among the employees.

Conclusions regarding the interference, restraint, and coercion

Even before the Union's organizational campaign assumed concrete and overt form, the Respondents had information that an organizer was calling at the homes of their employees. Thus not only did Foreman Dowling, on the morning of September 8, question employee Thrift about the union organizer's visit to his home the night before, but thereafter, on the morning of September 15, made it quite clear that he knew the union organizer had been calling on the Thrifts when he remarked, "I understand that union man has been back to your house again."[23] Immediately thereafter the Respondents launched their countercampaign in opposition to the concerted activities of their employees as set forth in detail hereinabove by questioning them concerning their union activities and memberships; by the promise of benefits if they would stick with the Respondents and warning them that they would be sorry or they would lose their jobs if they did not; by threatening to close the plant or remove it from Waycross; and by threatening to cease the manufacture of stock shoes.

The Respondents adduced testimony from several of their foremen that on or about October 14 there was distributed to them a written statement of policy regarding employee relations as follows:

> STATEMENT OF POLICY re: Employee Relations—
> TO: All Foremen and other Supervisors (one copy each)
> All Foremen and other Supervisors will acquaint themselves with these statements and will handle employees accordingly:
>
> 1. The Company desires that the law respecting management-labor relations be closely followed. Under the law of Georgia it is not necessary for an employee to belong to a union to hold his or her job and this should be made clear to all employees.
>
> 2. Employees have the right under the Taft-Hartley Labor Law to join a union and neither the management nor the foremen or other supervisors should interfere with employees if they desire to do so.

[22] It was shortly after this that Jack Rubin told Howison to stop the circulation of the petition as will be related hereinafter.

[23] While Foreman Dowling's remarks to Thrift are not sufficient to establish that the Respondents engaged in surveillance, they nevertheless foster the impression of surveillance, hence were as intimidatory in character as surveillance itself. *L & H Shirt Company, Inc.*, 84 NLRB 248; *S. W. Evans & Son*, 81 NLRB 161.

3. Foremen or other supervisors should not threaten or coerce or spy upon any employees concerning union activities.

4. Although the management has the right to discuss union activities it is instructed that if employees ask the advice of any supervisor concerning joining a labor organization that you refrain from giving such advice. You are also requested to refrain from making any antiunion statements to employees.

5. Foremen and other supervisors are likewise instructed to prevent any persons who are not employees to use Company property for purposes of soliciting membership in any union and employees are not to be allowed to engage groups in conversation and otherwise delay production in the plant.

6. Foremen and other supervisors must be impartial in their treatment of union members and non-members and there must be no difference because of union membership or non-union membership in regard to hire or tenure of employment or of any working condition.

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Although this statement of policy on its face indicates the Respondents' neutrality regarding their employees' union activities, dating at least from October 14, it is undenied and clear from the record that this policy was never made known to the employees either orally or in writing. Nor does it appear that the Respondents took any other action specifically repudiating the conduct and statements of their foremen set out hereinabove. Cf. *Columbian Carbon Company*, 79 NLRB 62. Under the circumstances, the distribution of the statement of policy did not have the effect of vitiating the unfair labor practices committed prior thereto. I find by reason of the acts, conduct, and statements of the Respondents and their supervisory employees set forth in detail hereinabove, that Respondents have interfered with, restrained, and coerced their employees in the exercise of rights guaranteed to them by Section 7 of the Act.

With respect to the circulation of the antiunion petitions, that Respondents are responsible for the acts of Foreman Sapp concerned therewith is too clear to require any discussion. It is also clear that Respondents are chargeable for the acts of the employees who circulated the petitions since they were instigated by the foremen and the employee was merely acting as the foremen's agent in the actual circulation. The Respondents in their reply brief submit that the polling of their employees by the use of the petitions in order to determine their union sentiments is not a violation of law. This contention is without merit. The Board has repeatedly held such conduct to be unlawful *per se*, being illegal interference by the Respondents in a matter which is exclusively a concern of the employees. See *Granite State Machine Company, Inc.*, 80 NLRB 79. The Respondents further contend that as soon as the circulation of the petitions came to their attention, they, via Jack Rubin, ordered the activity stopped, thus absolving them of liability for the actions of their foremen. While it appears true from the record that Foremen Dowling and Howison did stop the circulation of the petition when Jack Rubin came on the factory floor and ordered them to do so, nevertheless we are faced with a similar situation here as we had when the Respondents distributed their statement regarding employee relations only to the foremen. Even though Jack Rubin ordered the foremen to pick up the petitions and stop the further circulation, the employees were not told of management's action in this regard, nor were they told that the entire episode would be disregarded and no attention paid to those who did or did not sign. On the con-

trary, those employees who refused to sign were left with the impression that they would suffer the possible loss of their jobs and that the Respondents were using the petitions to find out how they felt about union organization. Nothing was done or said by management to dispel these thoughts from their minds. This contention of Respondents is without merit and I find that by the circulation of the antiunion petitions, the Respondents violated Section 8 (a) (1) of the Act.

The discriminatory layoffs and reductions in hours of work

On September 28, 1948, I. Rubin of Respondents' New York office sent the following telegram to the Waycross plant: "DISCONTINUE MAKING STOCK SHOES WE HAVE TOO MUCH ON HAND MARKET CONDITIONS VERY UNCERTAIN WORK ORDERS ONLY." Immediately upon receipt, the Respondents laid off 4 employees and thereafter continued the layoffs until October 15, when a total of 73 employees whose names appear in Appendix A attached hereto were laid off. The amended complaint alleges that the layoffs and a reduction in hours of work of all the plant employees from on or about September 27 to December 22, 1948, were the means used to discourage membership in the Union in violation of Section 8 (a) (3) of the Act.

The Respondents contend that their actions in laying off and reducing the hours of work of their employees were economically justified. Ralph Rubin, comanager of the Waycross plant, testified that the leather market had been firm since about September 1947, with an expected price drop; therefore, any stock shoes manufactured of the high-priced leather for future sale would have to be sold at a price based on the then prevailing decreased leather market, with a resultant monetary loss to the Respondents. Further, that at the end of September 1948, the Respondents had a sufficiently large stock to take care of their immediate needs.

It is recognized that an employer may lawfully reduce its operations or for that matter close its plant for any reason whatsoever, good or bad, sound or unsound, in its sole discretion, and without censorship from the Board, provided only that the employer's action is not motivated by a purpose to interfere with and to defeat its employees' union activities. If the latter is the true purpose, it is unlawful.[24]

While the record lends support to the theory that the shoe manufacturing industry was proceeding with caution in buying leather in September 1948, because the trend in the leather market was on the "easy" side,[25] nevertheless a

[24] *Goodyear Footwear Corporation,* 80 NLRB 800; *Pepsi-Cola Bottling Company of Montgomery,* 72 NLRB 601.

[25] In evidence are several trade publications which Ralph Rubin testified he read regularly and upon which he partially based his decision that Respondents stop manufacturing stock shoes on September 28, 1948. American Shoemaking, Volume 208, No. 11, September 15, 1948, contains an editorial on the general leather situation which notes among other things that "it is quite generally agreed in trade circles that the trend is definitely on the easy side and leather is available at a few cents less per foot as compared with a few weeks back. Now that hide markets have again weakened it is very evident that further downward adjustments of leather prices will be in the making. Tanners say that some business is being effected all the time, but buyers keep very cautious in their operations and it is also true that they are very selective in their purchasing. Most of the leather bought by shoe manufacturers at this time is for quick cutting and there is little or no indication of making important commitments for the future." A report in Leather and Shoes, Volume 116, No. 13, September 25, 1948, states "Trading in most types of upper leather from reports obtained would indicate that buyers still govern their purchases with a degree of caution and there is much to be desired in the way of real

careful analysis of the Respondents' purchases from the last of August 1948, when according to Ralph Rubin, he became aware of the leather market situation, through September 1948, reveals that Respondents did not hesitate to buy raw materials, but rather continued their purchases. The record fails to show that because of the anticipated drop in the leather market, Respondents in any manner reduced the volume of their purchases.

Furthermore, Jack Rubin testified that in September 1948, Respondents had in their plant the leather and sundries necessary for the continued manufacturing of stock shoes. Louis Oringer, Respondent's vice president in charge of sales, testified that although he was not too well acquainted with the raw material inventory at the plant, he knew they had "some." He stated further that "at certain times in 1948 we didn't want to cut any more stock than we could possibly help because we were afraid of a break in the market. And rather than have a finished product on the floor we would sooner have the raw material." Ralph Rubin also testified ". . . if we went and put our high-priced leather into those shoes during October, and then the market fell, we would be losing money; or rather, losing some of the profit we might gain if we held out and waited until the leather market dropped." It seems clear from the above-noted testimony that Respondents had in their plant leather already purchased and paid for which could have been used for uninterrupted manufacture. While I do not consider it within my province to advise Respondents how to run their business, it appears to me that Ralph Rubin's reason for holding "our high-priced leather" until the leather market dropped, in order to avoid monetary loss, is patently illogical because the only possible way the Respondents could have avoided loss would have been to immediately make the leather up into items that were currently salable, and sell them on the then firm leather market. Certainly, holding the high-priced leather until the leather market fell would merely insure a loss to that extent, and the longer it was held in a depressing market, the greater the Respondents' loss.

It is also worthy of note that Respondents started building up to full production at the end of November 1948, when, according to Ralph Rubin, only one leather company had dropped its prices.[26]

At the end of September 1948, Respondents had an unsold stock of 180,000 pairs of shoes or approximately 6,000 cases.[27] During the month of September they received orders for 9,989 cases of shoes of which 3,554 cases were for stock shoes. The stock turn-over for September 1948 was therefore 59.25 percent, leaving out of consideration the fact that there were 1,024 cases of shoes in stock about 3 years old.

Ralph Rubin testified that a turn-over of better than 25 percent of stock is good and is an indication that the stock on hand is moving out of the plant in a rapid manner. A 50 percent stock turn-over would be fine and he would keep stock at its level if he could turn it over every 2 months. I therefore find Respondents' contention that they had a sufficiently large stock at the end of September 1948, to take care of their immediate needs, to be without merit.

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volume business. Shoe manufacturers when in the market for leather give orders for such quantities that will take care of quick cutting, and there is little disposition shown to operate very far ahead."

[26] Ralph Rubin testified that other leather firms did not decrease their prices until sometime in the spring of 1949.

[27] The record indicates that depending on the type shoe, they are packed 24, 30, or 36 pairs to the case. For the purposes of this report, I have used the average of these figures as the number of pairs of shoes per case.

The Respondents also contend and point out in detail in their brief that although 6,435 cases of make-up shoes were ordered during September 1948, which would have required 2 full months' work at peak capacity to complete, they were justified in cutting down their production and laying off employees, since 4,477 cases were not scheduled for delivery until later dates,[28] and they could not be reasonably expected to make up these shoes at a time when they were faced with the prospect of a price decline in leather.

The record reveals that identical compelling reasons existed for discontinuing the manufacture of stock shoes at the end of August 1948. The Respondents were already on notice of a possible price drop in leather, according to Ralph Rubin's testimony. They had not received the number of orders they contend they should have received under normal conditions.[29] But the Union had not yet started its organizational campaign at the plant. Respondents worked their employees overtime in all departments during the month of September, and also hired new employees, with the result that it was a peak month in production. Since the Respondents increased their operations in September 1948, even though they were then faced with a break in the leather market, I am led to the conclusion that the sudden layoffs at the end of September could not reasonably be attributed to it. I find no merit to this contention.

A. G. Sims, assistant manager of the Nashville branch of United Shoe Machinery Corporation, testifying as a witness for Respondents, stated that manufacturing statistics of the National Stitch-Down Shoe Industry[30] for the year 1948 reveal that production for September was 5,400,000 pairs, October, 5,100,000 pairs, and November, 4,900,000 pairs. Respondents' production for September, according to Sims' figures, was 138,900 pairs, October 85,300 pairs, and November 51,700 pairs. Thus, Respondents' counsel points out in his brief, Respondents were not out of line with the industry trend in reducing their production during the months of September, October, and November, 1948. While it is true that the industry trend shows a decline in manufacture, the comparative reductions between Respondents and the remainder of the industry are very revealing. For example, the industry as a whole for October 1948 reduced its production 5.6 percent from the previous month whereas Respondents' production shows a decline of 38.6 percent. In November, the industry as a whole reduced its production 3.9 percent from the previous month, whereas Respondents' production declined 39.4 percent. From September to November 1948, the industry's reduction was 9.3 percent and Respondents was 62.8 percent. Since Respondents' reduction in manufacturing is so completely disproportionate to the general trend, it was undoubtedly attributable to factors other than the economic factors which the industry as a whole faced. The testimony of Michael Hyrka, a purchasing agent for Sam Shainberg Dry Goods Co., Memphis, Tennessee, furnishes a clew to such other factors. Hyrka credibly testified that early in October 1948, at the Shoe Show in New York, Oringer told him that because of labor

[28] 541 to be delivered November 1948.
670 to be delivered December 1948.
698 to be delivered January 1949.
1,042 to be delivered February 1949.
1,122 to be delivered March 1949.
329 to be delivered April 1949.
75 to be delivered May 1949.

[29] In August Respondents received orders for 3,862 cases, of which 2,850 were for make up and 1,012 were from stock. In September the total orders received were 9,989 cases, of which 6,435 were for make up and 3,554 were from stock.

[30] Respondents manufacture stitch-down shoes exclusively.

difficulty at the plant, Respondents were not then manufacturing cowboy boots and he did not know when they would go back to producing this item.

Oringer did not deny Hyrka's testimony. With respect to the date he learned of the Union's attempt to organize the plant, his testimony is in conflict. At one point he said it was not until October 26, at another he gave the date as August 16. In any event, it is clear and I find that Oringer knew of the Union's organizational activities at the time of the New York Shoe Show early in October 1948. Oringer admitted on cross-examination that because of the Union's organizational activities he "was afraid to take make-up business on that account for immediate delivery for fear it would be held up." He also admitted that because of the organizational activities he may have told customers that respondents could not make deliveries.

Thus it is apparent that the other factors which contributed to the Respondents' unusually large decline in production in October and November 1948 were the Union's organizational activities at the plant, and the Respondents' determined efforts, as heretofore found, to prevent successful organization of their employees.

The layoffs were not isolated, but were an integral part of the Respondents' campaign to defeat the Union's organizational drive. They followed closely upon the heels of the appearance of the Union, the Respondents' learning of it, and their campaign to defeat it which involved, among other things, threats to close the plant made by Jack Rubin as well as by various foremen, already discussed and heretofore found to be violative of the Act.

It is of significance that the layoffs came without prior notice to the employees and without the assignment of any reason. They came, in spite of the fact that only about a week before Jack Rubin told William and Marcella Thrift that Respondents would continue to manufacture stock shoes as long as they could.[31] In past years it was the practice in the plant for the foremen to spread word among the employees that there were few orders, and layoffs were imminent.

Respondents made it unmistakably clear to the employees that the advent of the Union was the real cause of the layoffs. Thus, Foreman Sapp early in December 1948, in a conversation with employee Reavis Dowling regarding the lack of work at the plant, specifically assigned the following reasons for this condition: "Well, you fellows brought it on yourselves. Forget about this union and Mr. Rubin would go back to making shoes and we could have regular work again." Similarly, late in December 1948 when employee McSpadden asked Foreman Sapp why the employees were not getting more work, Sapp replied "On account of the damn union. You fellows get shut [rid] of the union and we will go back to making shoes like we always did." When employee McInvale complained to Jack Rubin about the reduced hours of work at the plant, he was told that if the employees forgot about the Union the Respondents would "go back to work." In January 1949, Jack Rubin told Griffis, who had applied for reinstatement to his job, that there was plenty of work for him to do, but that he was not going to rehire him until he ascertained "which way this thing [union] goes."

On the basis of the foregoing and the entire record the conclusion is inescapable and I find that the layoffs of the employees named in Appendix A were motivated by and were the result of the Respondents' opposition to the unionization of

[31] In this regard employees Martha McQuaig and Pearl Higgenbottom credibly testfied wihout denial that they were told by Jack Rubin in August 1948 that Respondents would have "a big run of Romeos" that would last until Christmas. Jack Rubin also told Marcella Thrift, as heretofore found, that he would keep her busy on cowboy boots.

their employees and was done to discourage union activity, thereby discriminating against them within the meaning of Section 8 (a) (3) of the Act.

Ralph Rubin testified that on or about October 9, the date the Respondents were served with the original unfair labor practice charge in this proceeding, he conferred with Attorney Bennett regarding the matter. Around the end of October, on the latter's advice, the Respondents began rehiring the laid-off employees. Their policy was not to recall such employees through their own employment office. Instead they requested the Waycross office of the Georgia State Employment Service to refer to them former employees to fill particular jobs, noting the fact that they preferred the most experienced persons available. By this method the laid-off employees were referred to the Respondents and according to Ralph Rubin's testimony "they were all either rehired or refused to return to work for some reason of their own, or in a very few cases, we did not see fit to reemploy them." Neither the payroll records nor the evidence corroborates Ralph Rubin's testimony in this regard. As a matter of fact, the record is not at all clear on this point and it cannot be determined with any degree of certainty which laid-off employees were rehired or the dates of their reemployment. It is the contention of Respondents' counsel raised in his brief that the rehiring of the laid-off employees is evidence of the fact that they were not discriminatorily discharged. The Respondents' ultimate reemployment of, or offer of reemployment to any or most of the laid-off employees, after the original charge had been filed in this case, does not militate against the overwhelming effect of the evidence establishing discriminatory intent. *N. L. R. B.* v. *Vincennes Steel Corporation*, 117 F. 2d 169, 173 (C. A. 7).

In the light of the conclusions reached with respect to the layoffs as set forth hereinabove, and in the absence of any showing that circumstances had changed, I further find that the general reduction of hours of work of the production and maintenance employees, simultaneously with and subsequent to the rehiring of a number of the laid-off employees about the end of October 1948,[32] was motivated not by reasons of economic necessity, which were the same as those given for the layoffs and found to be without merit, but rather by the Respondents' continued opposition to the Union and their determination to discourage the union activities of their employees. By reducing the hours of work of their production and maintenance employees, the Respondents have discriminated with regard to the tenure of employment of such employees, in violation of Section 8 (a) (3) of the Act.

Inasmuch as the Respondents' objectives were violative of the Act, it is immaterial that in carrying them out, some of the victims of the Respondents' discrimination may not have been union members.[33] Discrimination in regard to the hire and tenure of employment of a group of employees, including nonunion members of the group, tends to discourage union membership and activities no less than discrimination directed against union members alone. Nonunion victims of discrimination are, in such case, entitled to the same relief under the Act as are the union members and I will so recommend hereinafter. *Capital City Candy Company*, 71 NLRB 447, 451. See also *J. R. Todd d/b/a Central Mineral Company*, 59 NLRB 757, 773; *General Motors Corporation*, 59 NLRB 1143, 1145–1146, enf'd as mod. 150 F. 2d 201 (C. A. 3).

[32] As previously noted, the record is not clear as to the employees rehired or the dates thereof.

[33] The membership cards of those employees who joined the Union are in evidence. A comparison of the cards with the employees laid off and those whose hours of work were reduced reveals that there are in both groups employees who did not join the Union.

The present state of the record, as hereinabove noted, does not permit a precise determination of the number of discriminatorily laid-off employees reinstated, or the dates when such reinstatements were made; nor is the record clear with respect to the reduction of hours suffered by the production and maintenance employees and the duration thereof. Under the circumstances, these matters may appropriately be ascertained at the compliance stage.

The discriminatory discharges

Essie Stevens commenced her employment with the Respondents as a cutter in July 1945. With the exception of a layoff for 1 month in April or May 1947, because work was slack, she worked regularly until September 29, 1948, when she was discharged by Foreman Clifford Howison. It was stipulated at the hearing that Stevens was a good cutter and Howison admitted that she did not very often waste leather.

Stevens joined the Union on September 17, at the behest of Julia Griffin, whose discriminatory discharge will be discussed hereinafter, and became one of its most active enthusiasts, as is evidenced by the fact that in the short period between the time she joined until the date of her discharge she signed up 25 employees to union membership. Stevens credibly testified without denial, that on the morning of September 28 at her cutting machine, Howison stated he was talking with the older employees because they would confide in him, then questioned her about the Union's activities at the plant. That afternoon Howison inquired if Stevens had a union book. Upon her negative reply Howison said, "You mean to say there hasn't been a union man talking with you?" He then told her that all of the people whom she had signed up wanted to revoke their memberships. Howison's closing remark was that the plant would be moved back north if the Union's organizational campaign was successful.

At about 10:30 a. m. on September 29 Stevens was issued a job to cut parts for a two-tone moccasin shoe.[34] Stevens testified that when a cutter is issued a two-tone cutting job she is usually asked by Raymond Morris, the assistant foreman of the cutting department,[35] which color leather she prefers to cut first and her choice is respected. That morning, however, Stevens testified that Morris without asking what color she preferred to cut first, brought only the brown elk leather to her bench. She testified also that whereas the master ticket[36] called for two colors of leather to be cut, the size ticket referred to by some employees as the white ticket, did not. The result was that Stevens cut the plug, quarter, and tongue of the brown elk leather. Stevens discovered her mistake within a half hour after she started cutting the job, and reported it to Foreman Howison. In spite of the fact that Stevens had never made a similar mistake during her entire period of employment and had never been warned about disciplinary action to be meted out for such mistakes, Howison discharged her stating, "If you did not have union on your mind you would not have made a mistake; you are fired." Stevens left the plant shortly thereafter and has not been reemployed.

[34] The vamp and foxing were to be cut out of brown elk leather, and the plug, quarter, and tongue out of tan leather.

[35] Morris is also in charge of the leather room. He assorts and grades the leather and assigns it to the cutters. Either Morris or another employee carries the leather to the cutter's bench.

[36] The master ticket which is made up in the plant office sets out the complete instructions for the manufacture of the shoe. It contains among other things the colors of leather to be used, the sizes to be cut, and the die numbers. As hereinafter found, usually both tickets were attached to the leather when it was brought to the cutter's bench.

The Respondents in an effort to impeach Stevens' testimony regarding the events on the morning of September 29, adduced testimony of Howison, Miller, and Grace Kirkland, a floorlady in the cutting department, to show that the cutters obtain their instructions for the job only from the master ticket and furthermore it is the cutter's responsibility after reviewing the master ticket to determine the color leather to be cut for each part of the shoe. Thus Howison testified that a cutter could not make up an order from only the information contained on the white ticket (both the size ticket and the leather cutting slips are white) but would have to look at the master ticket to obtain complete information. Kirkland testified that the white ticket contains only the size runs to be cut and is made up only when special orders are cut. It was Kirkland's further testimony that on the morning of September 29 Stevens did not receive a white ticket and could not have cut the order without referring to the master ticket. On cross-examination Kirkland admitted that the white tickets are made up when the cutting department has "rush" orders, and in such cases the white ticket contains all pertinent information to enable the cutter to do the job without reference to the master ticket. In fact in these situations the master ticket does not accompany the order. Kirkland also admitted that sometimes the cutters themselves will make out a white ticket to facilitate their cutting of the job. Morris testified that the white ticket had been used several times in the spring of 1949 in lieu of the master ticket and that the white ticket contained all pertinent information required to cut the job correctly.

Stevens testified that about a month before her discharge so many of the girls in the cutting department were making mistakes because of the instructions on the master ticket that Howison had Kirkland make up separate white tickets which were attached to the master ticket and gave orders to the cutters to follow the instructions on the white ticket. Gladys Spradley, another of Respondents' cutters, credibly testified without denial that on or about September 1 she cut two cases of ladies' oxfords instead of men's as a result of following the instructions on Kirkland's ticket (the white ticket) and she was reprimanded by Howison only to the extent that he told her to be more careful. Mattie Mobley, a cutter in the Respondents' employ since 1947, corroborated Stevens' testimony regarding Howison's orders to the cutters that they be guided by the white tickets and further testified without contradiction that Howison told the cutters by following the white ticket they could do away with reading the master ticket and thereby speed up their work. Mobley also testified that she had made mistakes in the past and although she was required to cut the order over the only disciplinary action she suffered was that she was not compensated for the second cutting.

I credit the testimony of Stevens, Spradley, and Mobley regarding the use of white tickets in the cutting department and further credit Stevens' testimony that the white ticket included in her cutting order on the morning of September 29 called for the cutting of only one color leather.

Morris did not deny Stevens' testimony that he brought only the brown elk leather to Stevens' bench on the morning of September 29. He admitted it has been his practice to ask a cutter assigned to two-tone cutting job what color leather she wishes to cut first and in such instances he brings only part of the leather for the job to the cutter's bench. When, however, he brings both color leathers to the cutter's bench he places the leather she wants to cut first on top of the other leather. Morris also admitted that he has made mistakes in bundling leather and sometimes may go off in shades of leather. Howison admitted that Morris has made mistakes in assigning leather to cutters. Mobley credibly testi-

fied without denial that on several occasions she was given the wrong color leather by Morris and called this to his attention. She testified also that it is not the cutter's responsibility to obtain the correct color leather because it is carried to the cutter's bench by either Morris or the boy from the leather room. I credit Stevens' testimony and find that on the morning of September 29 Morris brought only the brown elk leather to her bench.

It is clear from the above and I find that even though Stevens mistakenly cut the plugs, quarters, and tongues out of brown elk leather, she was not entirely at fault since the white ticket called for only one color leather, and Morris brought only brown elk leather to her bench.

The Respondents contended at the hearing and in their brief that the real cause for Stevens' discharge was not her careless work, nor the loss of $40 worth of leather,[37] but rather the fact that Stevens was insubordinate to Foreman Howison, and in order for a foreman to maintain discipline in as large an organization as the Respondents', the foreman would be obliged to take prompt action in discharging an employee who made a display of temper and refused to accept a disciplinary layoff for faulty work. We turn next, therefore, to a determination of the real reason for the discharge of Stevens.

Howison testified that on the morning in question, Nora King, a cutter in the Respondents' employ since 1941, called his attention to the fact that Stevens was not cutting the correct color leather. He walked down to her bench, told her she was cutting wrong and that she should lay off for a few days. Thereupon Stevens became "nasty" and said she would go off right then and they proceeded to the office to obtain her pay. Howison did not further elaborate on Stevens' nastiness. On cross-examination Howison changed his testimony and stated that he was standing in the middle of the aisle close to Stevens' place of work when she told him she cut the job wrong.

Nora King worked in the front of the cutting department about 45 to 50 feet away from Stevens' bench. King admitted that the only disciplinary action taken when she made mistakes was to make her cut the job over. She testified that on the morning of September 29 she went to Stevens' bench to obtain a die in order to cut tan leather for a job similar to the one Stevens was cutting. King stated that she asked Stevens for the die and said: "Essie, aren't you cutting your shoes wrong?", to which Stevens allegedly replied "I have cut as many as you have." King testified that she was assigned the two-tone cutting job on September 28, in fact had cut the vamps and foxings out of brown elk leather that same afternoon. Upon further questioning she testified that she did not remember what she had cut on September 28. The Respondents' payroll records for the week ending September 28 in evidence reveal that King did not work on September 28.[38]

Stevens denied that Howison told her he would have to lay her off in order to discipline her. She also denied that King came to her machine about the time that she was cutting the wrong leather. Howison did not impress me as an honest, forthright witness. King's testimony on its face cannot be credited.

[37] Howison estimated that the brown elk leather cut by Stevens had a value of $40 and since it could not be used for the two-tone shoe she was then cutting, it was wasted. The General Counsel brought out however through the testimony of Foreman Alton Bryant, in charge of Respondents' packing department, that while the hearing in this proceeding was in progress the Respondents were then manufacturing a mocassin shoe of all brown elk leather and since the Respondents had saved Stevens' cuttings, it could then have used them, thus saving the cost of the leather.

[38] King testified in answer to a question by Respondents' counsel that it is the employees' custom to turn in their time daily and that she follows the custom.

I credit Stevens' denials as set forth above and find that she was not told to lay off several days as discipline for her mistake in cutting the wrong color leather, which even if given Stevens would have been a more severe disciplinary measure than was given other employees in the past for similar mistakes. I further conclude and find that she was summarily and discriminatorily discharged by Howison on the morning of September 29 because of her union activities in violation of Section 8 (a) (3) of the Act.[39] By thus discriminating against Stevens, the Respondents have discouraged membership in the Union and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

Julia Griffin commenced her employment with the Respondents in March 1947 as a lacer and quit the last of April 1947 because of slack work. She returned to her job within 2 months and was steadily employed until discharged on September 30, 1948.[40] During the second period of her employment, with the exception of 1 week, she operated a counter sewing machine under the supervision of Foreman Youmans.

Griffin became interested in the Union early in the campaign. On September 14, organizer Cochran visited her home, at which time she signed an application for membership in the Union and accepted a membership application book to be used in recruiting other employees to union membership. During her lunch hours she solicited union memberships among the employees and was successful in signing up a number of them. At about this time, as previously found in the section of this report entitled "Interference, restraint, and coercion," Foreman Youmans asked Griffin if she had her union card and threatened, if the Union was successful in organizing the employees, the plant would be moved back north. He also told her that one of the reasons the Respondents moved to Waycross was that they would not have to have a union in their plant.

Griffin testified that about 45 minutes after she started work on the morning of September 30, Youmans came to her machine with a case of men's heavy riding boots, told her that he had warned her time and time again about running off on her counter sewing,[41] that it did not seem to do any good and he was going to have to get somebody else in her place. Youmans accompanied Griffin to the office where she was paid off in full and left the plant.

The Respondents contend that Griffin was discharged for a justifiable cause, not violative of the Act, namely, that she passed badly sewed counters on to the next department although she had been warned repeatedly to bring them to the attention of either the foreman or an odd shoe girl who would make the necessary repairs without loss of compensation to the employee. It is the further contention of the Respondents that when an operator passes improperly sewed counters to the next operation, the uppers which contain them may be fitted to

[39] Howison's statement made to Grace Spradley about October 1, according to her undenied, credited testimony, that "Essie Stevens did not know what she was getting into by signing us all up," is further convincing evidence of the Respondents' discriminatory motivation in discharging Stevens.

[40] Griffin mistakenly testified she was discharged on September 29. She did state, however, that it was on a Thursday, which was September 30. I find she was discharged on September 30, the date set forth in the amended complaint.

[41] After the upper part of the shoe is assembled by sewing the various segments together, a counter or stiff piece of leather is sewed in at the inside back part of the shoe to reinforce the leather which goes around the heel thus preventing the heel from falling down. Where an operator in sewing the counter from the inside runs off the counter itself, she fails to securely sew the counter to the upper part of the shoe. From the outside of the shoe nothing appears to be wrong, but actually the row of stitches have missed the stiff counter on the inside and it is not held in place properly to reinforce the shoe.

lasts, sent into further production and the error not discovered until the final inspection stage or perhaps until later delivered to a customer, with the result that finished shoes containing defective counters become seconds and must be sold at a lower price than regular merchandise. It is also contended that because of Griffin's negligence, Supervisor McCabe of the packing department, and making department Foreman Sapp lost time in their work because they were obliged to carry the improperly sewed counters back to the fitting department for correction.

Griffin's operation of sewing counters was confined for the most part to riding boots and majorettes, admittedly a more difficult operation than sewing counters in shoes. Foreman Youmans' testimony regarding Griffin's ability in her job was rather conflicting and contradictory. At one point Youmans testified that Griffin had been having some trouble with her work throughout the period of her employment. Yet, at another point he stated "she was fairly good until her last few weeks there." [42] Indeed, no credible evidence was offered by the Respondents to prove that Griffin was generally incompetent or that any specific work done by her was subject to any more rejection or criticism than fell to the lot of the other four or five operators sewing counters, and who were not discharged. Thus Youmans testified that among the counter sewers he had no more than the usual amount of trouble with Griffin.

Griffin admitted that on occasion Youmans brought shoes back to her, pointed out the defective work and told her to try not to "sew off" any more than she could help. At no time was she threatened with layoff or discharge. Griffin credibly testified without denial that about 3 weeks before she was discharged and on occasions prior thereto, Youmans told her that she did not "sew off" more than any of the others and that she was one of the best counter sewers he had. Furthermore, Griffin was assigned to the task of sewing counters in samples, and it was important that the samples reflect the best of workmanship. Within 2 weeks before her discharge, Griffin sewed counters in sample majorettes, sandals, and loafers. Only the best workers and the foremen were entrusted with the sample-making jobs. From the above and the record as a whole I am convinced and find that even though on occasion Griffin was spoken to about defective work, which was not unusual among the counter sewers, she was by virtue of the fact that she was assigned to the more difficult job of sewing counters in boots and majorettes and did most of the sample work in this field, a competent worker.

Youmans' testimony regarding the disposition of improperly sewed counters by operators is conflicting. He testified that the operator is supposed to hold those shoes aside until she finishes the case, then give them to an odd shoe girl or the foreman who repairs them on a different machine. When asked what becomes of the uppers on which no mistakes are made, he stated that the operator places them in the same basket but that the improperly sewed counters are placed on top and it is incumbent on the operator to call that to the attention of the foreman. Griffin testified that Youmans told her never to try to repair the improperly sewed counters for the reason that she would not be able to stitch the second row in the same place where the original needle holes were sewed, thus making two lines of needle holes. Youmans instructed Griffin that such uppers were to be passed downstairs [43] where they had a method of repairing them before the soles were placed on the uppers. Griffin testified further that whenever Foreman Youmans was in the vicinity of her machine and she had "sewed off" on counters, she would call his attention to her mistakes and

[42] By last few weeks Youmans testified he meant 3 or 4 weeks.

[43] Griffin was not certain of the department to which they were sent.

he would put such uppers back in the case and they were passed on downstairs. Griffin also testified that on the occasions when Youmans brought shoes with improperly sewed counters back to her, he would point out the deficiency and take them back downstairs. Youmans was an evasive, unconvincing witness. His testimony herein is not accepted. There seems to be no apparent reason for an operator not to point out her mistakes in counter sewing to the foreman if he is in the vicinity of her machine, as Griffin testified she did, since she does not suffer any loss in pay, nor is she likely to be discharged, as the record does not reveal that respondents discharged any operators because of bad counter sewing. It should also be noted that about 80 percent of the bad work is picked up in the fitting department, so that only a small amount filters through to the next operation. Griffin's candor in admitting the fact that she was spoken to on occasion by Youmans when he brought back improperly sewed counters to her, lends credence to her testimony. I credit Griffin's testimony as set forth hereinabove.

Although Youmans stated that he had had trouble with Griffin passing bad work prior to the day she was discharged, he was unable to testify with certainty when other trouble arose. In answer to a leading question he said, "A week or two, but I am not sure of the date." Nor could Youmans state the number of times he had warned Griffin about passing bad work. He first answered, "Oh, it would be hard to say. Several times. But it would be hard to say how many." Later he stated it was a dozen times. I do not credit this testimony.

The Respondents did not have any rule regarding discharging an operator who passed bad work. Youmans said it depended on the amount. Youmans could name only one other operator, Jourane Guy, who was discharged for similar reasons. He was unable to state whether this took place a year or longer before Griffin's discharge. In any event Guy was given her job back in a few weeks. Youmans freely admitted that the counter sewer operators in his department "make mistakes all along."

Upon the entire record I find that Griffin did on occasion improperly sew counters and may have passed some improperly sewed counters on to the next department neglecting to call such deficiences to the attention of her foreman. However, I cannot credit the Respondents' contentions that Griffin was discharged for these reasons; rather I am persuaded and the preponderance of the evidence leads me to the conclusion that the reasons given by the Respondents were merely pretexts to conceal their illegal motivation for her discharge. As mentioned previously, Griffin was an early and active adherent of the Union. Not only was she questioned at that time about her union card, but was threatened with the plant's removal if the union drive was successful.[44] It is most significant that Griffin according to Youmans was "fairly good" until about 3 or 4 weeks before she was discharged, which just happened to coincide with the inception of the union drive. Finally, as found above, Griffin was a competent worker who was regularly assigned to the important task of sewing counters in sample shoes. I conclude and find that Griffin was discharged in violation of Section 8 (a) (3) of the Act because of her membership in, and activities on behalf of the Union, and that by thus discriminating against Griffin, the Respondents have discouraged membership in the Union and interfered with, re-

[44] Such questioning and threats give rise to a strong inference, in the absence of any other credible explanation, that Respondents learned or at least suspected that the employee concerned had joined the union; and was discharged for that reason. See *Samuel S. Brody, d/b/a Standard Service Bureau*, 87 NLRB 1405.

strained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

Lola Davis entered the Respondents' employ in 1936. She was discharged on November 3, 1948. During that period she left the plant for about a year and worked elsewhere, and also was out sick for several months. The total period of her employment was about 10 years and 4 months.

Davis performed practically every machine operation in the fitting department. In 1946 and 1947 she instructed new fitting department employees in the methods of operating the different machines. She also assisted the older employees in their operations when new style shoes were manufactured. In 1948, when she returned to operating a double needle machine, Davis was assigned to sample work particularly on new style shoes that were being manufactured at that time. Davis was under the supervision of Foreman Youmans during at least the last 4 years of her employment. There is no dispute that Davis was an excellent worker.

Davis signed an application for membership in the Union on September 30, 1948. Early in September, prior to the time she joined the Union, Foreman Youmans approached Davis at her machine and inquired if she heard anything about the employees organizing into a union. Youmans told Davis to try to discourage the Union's activities if she was solicited. Davis also testified that in September or October she had several conversations with Jack Rubin regarding the Union. On the first occasion Jack Rubin came to her machine and asked if anybody had approached her with any of that "damned stuff." She answered "No." Davis, on another occasion, complained about the lack of work to Jack Rubin who told her that the Respondents had ceased manufacturing stock shoes, that he had been making efforts to treat the employees well by giving them "something to do," but if they insisted on acting like "they wanted to, he could get nasty, too." Shortly thereafter Davis again spoke to Jack Rubin about the fact that Foreman Youmans was not giving her work. Jack Rubin said the Respondents were only going to manufacture order shoes and "that he would not make another stock shoe if God was to come down and tell him to."

Davis attended her first union meeting on or about October 11, thereafter she enlisted the membership of eight or nine other employees and proselytized for the Union during her lunch hours.

On or about the morning of November 3, as Lola Davis entered the plant to report for work, Foreman Youmans was waiting at the stairs and told her that she could not go up to her floor.[45] The following colloquy ensued: And I said, "Well, why?" And he said, "Because you are fired." And I said, "Why?" And he said, "For union activities." And I said, "What do you mean by that?" And he said, "just union activities." And I said, "Well, Lonnie, I think I should have a chance to prove that or know something about it, because it is news to me and I don't know anything about it." Foreman Youmans told Davis he was not required to prove anything, that he had nothing further to say to her, and that she could obtain her check in the office.

[45] Lola Davis testified that she was discharged on the morning of November 8. The payroll records in evidence reveal that the name L. Davis appears for the week ending November 2, as having worked 4¼ hours on the last day of that pay period. Her name does not appear on the payroll record for the week ending November 9, which leads to the inference that the last day she worked was November 2, and upon reporting for work on the morning of November 3, was discharged. It appears therefore and I find that she was mistaken as to the date she was discharged. I am satisfied however that her credibility has not been adversely affected by this mistaken testimony.

At the hearing Respondents defended their discharge of Lola Davis on the grounds that she solicited union memberships during working hours. In their brief, the Respondents contend that the discharge was for cause in that while soliciting union memberships, Lola Davis not only neglected her work, "but even worse," she was threatening and abusive to employees around her who were trying to work and who did not share her views with reference to joining the Union.

Youmans testified that on or about the day he discharged Lola Davis, several girls among whom were Flossie Davis, Levo Steedley, Ruby Bullard, and one whose name he could not recall, complained to him that Lola Davis threatened them that she was going to be in charge in a few weeks and would fire them if they did not join the Union. He stated also that complaints of a similar nature had been made to him prior to that time by various employees whom he did not name. Testifying further, Youmans stated that Flossie Davis had also complained to him regarding Lola Davis about a week before her discharge, Levo Steedley had not complained previously, and Ruby Bullard had complained several times.

Upon cross-examination regarding the number of times Flossie Davis complained to him, Youmans testified as follows:

Q. How many times did Mrs. Flossie Davis talk to you?
A. Several times, but I wouldn't know just how many.
Q. Did you do anything about it the first time she spoke to you?
A. No. I ignored it.
Q. Did you do anything about it the second time she spoke to you?
A. No.
Q. Did you do anything about it the third time she spoke to you?
A. I wouldn't know for sure about the third time or not.

With respect to the complaints received from Levo Steedley, the cross-examination of Youmans was as follows:

Q. How many times did Mrs. Steedley talk to you about Mrs. Davis' conduct?
A. I wouldn't know.
Q. More than once?
A. More than once.
Q. What did you do about it the first time she talked to you about it?
A. I ignored that, too.
Q. What did you do about it the second time?
A. I don't recall what I did the second time.

Flossie Davis who operated a double needle machine near Lola Davis' machine, testifying as a witness for the Respondents, stated that Lola Davis had asked her to join the Union "just every day, for a good while. Through the day." Further that Lola Davis "got nasty towards her" and threatened her if she would not join. It is most significant that Flossie Davis signed an application for membership in the Union on September 28, at a time when Lola Davis had not yet become a member and presumably was not interested in getting other employees to join. Despite this fact, Flossie Davis testified that she told Foreman Youmans about Lola Davis "worrying" her about the Union several days before she joined, and thereafter spoke to him only once about a similar incident 2 or 3 days after she had signed her membership application blank on September 28. Testifying with respect to when Lola Davis made persistent

demands of her to join the Union; Flossie Davis stated that this happened continuously for about a week after Christmas, around the first of 1949. As noted previously, Lola Davis was discharged on November 3, 1948, and has not worked for the Respondents since that time. Flossie Davis did not impress me as a reliable witness. Her testimony was exaggerated and confused. It is not credited.

Levo Steedley, an employee in Foreman Youmans' department, appeared as a Respondents' witness and testified that on one occasion during working hours, Lola Davis asked her to join the Union. Steedley stated she did not answer Lola Davis but walked away. Steedley did not remember when this solicitation took place. Steedley never told Foreman Youmans that Lola Davis spoke to her about the Union.

Ruby Bullard, a witness for the Respondents and a former employee of the fitting department, testified that Lola Davis was the only employee who asked her to join and talked to her about the Union. She testified further she reported to Foreman Youmans two or three times about Lola Davis "messin [her] up," and getting mad at her and that because of such incidents she could not make much money. Questioned as to the manner in which Lola Davis' madness manifested itself, Bullard answered that Davis made all kinds of faces at her. Bullard admitted that talk about the Union was going on throughout the plant.

Minnie Lee Lightsey, an employee of the cutting department, testifying as a witness for the Respondents stated that Lola Davis, about five or six times during working hours, told her the benefits she would obtain if the employees joined the Union and it was successful in organizing the plant. Lightsey stated that she never reported Lola Davis' conversations to any foreman, but "just like everybody talks up there [the plant], she talked to various employees about Lola Davis." She was never threatened by Lola Davis during any of these discussions.

Lola Davis admitted that she engaged in conversations about the Union in the plant but did not do so "more than anybody else—." She denied that she made it her business to directly seek out any employee to try to get her to join the Union. While participating in the union talks around the plant Lola Davis, as testified to by Lightsey, mentioned that benefits could be obtained only if the employees would join and the organizational drive was successful. Such talk no doubt was probably construed by Respondents' witnesses as a request that they join the Union and I so find. I credit Lola Davis' denials that she directly solicited employees in the plant during working hours to join the Union. As already indicated in other sections of this report, Youmans' testimony was generally contradictory and unconvincing and I do not credit his testimony herein with respect to the number and type complaints regarding Lola Davis.

It appears clear from the record that there was no rule against casual visitation or brief conversation between employees during working time on subjects unrelated to their work. Furthermore, from the inception of organizational activities, talk about the Union during working hours, both for and against, participated in by the employees as well as management, seems to have been the rule rather than the exception. As hereinabove found, the Respondents inspired and countenanced the circulation of an antiunion petition among the employees during working hours. The record also reveals that various collections including an annual collection for foremen's Christmas gifts were made from employees at their places of work during working hours. There was no showing that employees were ever disciplined, much less discharged for talking with

their fellow workers. With respect to Lola Davis' propensity for talking to other employees, Foreman Youmans admitted she did not engage in such conversations any more than other employees. Nor is there any substantial evidence that the conversations in which Lola Davis engaged during working hours, interfered with production.

Lola Davis had been employed more than 10 years at the time of her discharge. Her work performance was excellent and department satisfactory during that entire period. According to Foreman Youmans he first began to receive complaints from employees that Lola Davis had been soliciting them to join the Union, threatening them if they did not, and thus interfering with their work some 4 weeks prior to her discharge. There is no evidence that Foreman Youmans ever admonished or reprimanded her. Nor for that matter was she ever warned against interfering with other employees prior to the date she was discharged.

Thus it is apparent that whatever complaints the Respondents may have had regarding Lola Davis' alleged interference with the employees arose soon after and coincidentally with her joining the Union and participating in organizational activity in its behalf. As found heretofore, prior to Lola Davis' discharge, the Respondents had by various acts interfered with the organizational activities of their employees, indicating their opposition to the Union and threatening employees with the loss of employment if the union drive was successful.

Upon the basis of the foregoing and upon the entire record, I conclude that Lola Davis' talking during working hours and alleged interference with other employees was seized upon by the Respondents as a pretext for her discharge and that the real motive for the termination of her employment was her activities and membership in the Union and the Respondents opposition thereto. In view of these circumstances, I find that Lola Davis was discriminatorily discharged in violation of Section 8 (a) (3) of the Act because of her membership in, and activities on behalf of the Union and that by thus discriminating against Lola Davis, the Respondents have discouraged membership in the Union and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

Docia J. Seabolt commenced her employment with the Respondents in October 1942. She was discharged on April 8, 1949. Throughout her employment she worked in the packing department and performed practically all of the operations there. Since about 1945 she has worked on the heel padding operation under the supervision of Foreman Alton Bryant and Assistant Forelady Gladys McCabe.

Seabolt joined the Union at the meeting held on October 11, 1948. The following morning during a lull in work [46] Seabolt engaged employee Belle Dial in a short conversation and was reprimanded by Foreman Bryant, who told her that if she did not have anything else to do but talk, she should go home. Seabolt testified that Foreman Bryant had never previously said anything to her about talking to fellow employees nor does it appear from the record that Respondents had any rule, oral or written, against talking in the plant.

Seabolt signed up six to eight employees to union membership. She was elected union shop steward for the packing department in January 1949, and thereafter continued her union activity by proselytizing for it among the employees in the plant while they were standing around waiting for work and by signing up employees to membership and collecting dues outside the plant.

[46] Seabolt testified that the employees were standing around waiting for work about as much as they were working.

On April 8, 1949, at about 4:30 p. m., Seabolt was waiting for her weekly pay check, having completed her day's work, which included the heel padding of four cases of Western boots, when McCabe told her and heel padder Dial to report to Foreman Bryant.

Dial testifying as a witness for the Respondents stated that she preceded Seabolt to the inspector's table and was told by Foreman Bryant, who showed her one of two boots where the heel pad had been pasted over a protruding tack,[47] that she would have to get the tacks out. He pointed to two other cases of boots which he claimed contained similar defects and she returned to her bench with the three cases.

Seabolt testified that upon reporting to Foreman Bryant he pointed to four or five boots on the inspector's table and remarked, "I told you not to let this happen again. I will lay you off for two weeks." Seabolt looked through the cases of boots she had worked on and according to her testimony she found a boot which contained a tack she had failed to cut off, another where the heel pad was out of line and a third with the heel pad entirely pulled out. She then requested McCabe to help her look through the boots to find other deficiencies. Although, according to Seabolt, she did not find any, McCabe remarked, "They are all like that. Tacks in them that long." By now it was past quitting time. Seabolt returned to her bench to fill out her daily time sheet when Dial asked her if she was going to do the shoes over. Seabolt replied, "No, he has done paid me off, it is after working hours. He didn't tell me to do them, and I am laid off for two weeks. They can do them while I am gone." Foreman Bryant who was behind Seabolt and overheard her, said, "For that remark I fire you." Seabolt has not been reemployed.

It is the Respondents' contention raised in their brief that the record is void of any evidence to show a connection between the discharge of Seabolt and her union activity and that just cause existed for her discharge in that she talked "in an improper way" to a fellow employee in the presence of her foreman.

Foreman Bryant testified that the day before Seabolt was discharged he warned her about "bad work." He did not know when, before that date, she had done bad work but stated "she had a good bit for the last couple of weeks before she was discharged."

Seabolt admitted that occasionally she neglected to brad or clip off a nail which was sticking through from the bottom of the heel before pasting in the heel pad. Such shoes were brought back to her by either the inspectors or McCabe and she reprocessed them. With respect to the incidents prior to the day she was discharged, Seabolt testified that Foreman Bryant brought a case of shoes to her which she did over. The next morning[48] Foreman Bryant brought another case of shoes to her which he stated was the same case she had worked on the previous day, and said, "Don't let this happen again." Seabolt testified she went through the case of shoes very carefully and even though there was little, if anything wrong, she removed several heel pads which were out of line and replaced them, in order to demonstrate that she was willing to do her work properly. Seabolt further testified that prior to this occasion, Foreman Bryant had never personally brought shoes back to her. Foreman Bryant did not impress me as an accurate, convincing witness. Seabolt appeared to be a forthright witness who testified in a straightforward manner. I credit her testimony herein.

[47] It was the heel padders duty to cut all protruding tacks from the inside of the shoe prior to pasting in the leather heel pad. Upon occasion some were overlooked.

[48] This appears from the record to be the day before she was discharged.

As to the defective work on the day Seabolt was discharged, Foreman Bryant testifying in contradiction to Seabolt's version of the number of boots which contained protruding tacks, stated there were between 50 to 100. Upon further questioning he stated that he did not "count them exactly" but he knew there were a lot of them because he looked in them. This, despite the fact that he admitted he looked at only about 96 boots in the 15 minutes he was inspecting them and "only occasionally" did the boots come through to his department with nails protruding through the heels. It is interesting to note in this connection that McCabe testified that it is very difficult to see tacks sticking up in the heels of Western boots particularly because of the fact that they are made with high uppers. As already indicated, Foreman Bryant's testimony was inaccurate and generally unconvincing and I do not credit it in this regard.

There is also some dispute as to whether Foreman Bryant told Seabolt to take the cases of boots back to her bench to rework them properly that day. Bryant testified he did. Seabolt claimed he did not tell her to do them over. It is clear that Foreman Bryant spoke to Seabolt about 4:30 p. m. McCabe, testifying as a Respondents' witness, stated that in the event an employee has had bad work returned to her about quitting time, it is usually left for repair until the next morning. As a matter of fact, Foreman Bryant must grant permission before an employee may perform work after quitting time. McCabe testified further that she and Foreman Bryant were walking through the packing room, turning out the lights preparatory to going home when Seabolt's remark was overheard. It is also significant that Dial was not specifically told to make repairs on the cases of boots returned to her that afternoon. Under all the circumstances I credit Seabolt's testimony as hereinabove set forth.

It will be recalled that on the same occasion, Foreman Bryant advised Dial of the fact she had turned in work with defects identical to those found in Seabolt's work. Moreover, Dial credibly testified, it was not uncommon for her, during the 3 years of her employment in the Respondents' plant, to have such defective work on her part called to her attention. Yet, on the occasion in question, in sharp contrast to the treatment accorded Seabolt, the foreman merely instructed Dial to correct the defects in her work, neither reprimanding her, disciplining her, or even threatening discipline in the event of a repetition of the offense.

Seabolt admitted making the remark in question. Although she testified that the other employees of the packing department had left the plant at the time, I find based on the testimony of Respondents' witnesses Mollie Smith and Nellie Wilds, that they as well as some other employees heard it. It is clear that the remark was made in answer to Dial's question and uttered in a fit of temper. While it is conceivable, Foreman Bryant might have believed Seabolt's remark would injure plant morale and lessen his authority over those whom he supervised, I am convinced, based upon Respondents' antiunion animus, their questioning of employees regarding union activities, their threats, and Seabolt's known union sympathies and activities,[49] that Foreman Bryant seized upon Seabolt's remark as a pretext to get rid of her and that the real motive for the termination of her employment was her activities and membership in the Union and I so find. In view of these circumstances, I find that Seabolt was discriminatorily discharged in violation of Section 8 (a) (3) of the Act, and by thus discriminating against Seabolt, the Respondents have discouraged membership in the Union

[49] Respondents' brief acknowledges that Seabolt's election as a shop steward in January 1949, and her other union activities were generally well known around the plant.

and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

George W. Hendrix, Jr. began his employment with the Respondents on or about April 15, 1942. He entered the armed services on February 16, 1943. Upon his release, he returned to the Respondents' employ on May 16, 1946, and worked until discharged on April 22, 1949. Throughout his employment he worked on the finishing line as an edge trimmer.[50] From 1946, he worked under Foreman Albert Dowling.

Hendrix joined the Union on September 30, 1948. He also obtained a membership application book and signed up four employees to union membership.

Hendrix credibly testified without denial that on September 30 Foreman Dowling inquired if he had joined the Union. Hendrix answered that he had not,[51] but that he would, if he could obtain any benefits thereby. Dowling told Hendrix that the Union "wasn't nothing but a communist outfit and they hired niggers, and that it wouldn't work because they worked piece work here."

At the time the antiunion petition was circulated in his department, Hendrix was approached by Julian Dial and asked to add his signature, which he refused to do. Just then Foreman Dowling passed by and said to Dial, "Don't force him into it." [52]

Hendrix testified that he carried the membership application book used in the recruitment of other employees in his pocket in plain view of his foreman. He also wore a union button in the plant.

Hendrix was elected union shop steward for his department at the meeting held the night of January 20, 1949. On the morning of January 21, Hendrix cut two shoes [53] and was laid off from work for 1 week by Foreman Dowling. He resumed work on January 28.

On the afternoon of March 17, the day before the Board election in Case No. 10–RC–430, Hendrix distributed union leaflets in front of the plant.

At about 10 a. m. on the morning of April 22, Hendrix cut two shoes. He continued to work on several more cases of shoes and upon running out of work was told by Foreman Dowling that he was being laid off for good and would be called when he was needed. Hendrix has not been reemployed.

The Respondents contend that the discharge of Hendrix was not violative of the Act because, as stated in their brief, Hendrix "was discharged for two distinct and sufficient reasons, namely: that he was cutting and spoiling an excessive number of shoes and he was also a chronic late-comer."

That the edge trimming operation resulted inevitably in some cut shoes even by the most experienced edge trimmers, seems clear. Foreman Dowlings testimony regarding the permissible number of cut shoes per operator per week is conflicting. At one point, he gave the number as three. At another point, he

[50] An edge trimmer works on a machine which contains bladelike cutters running through a shaft. By applying the shoe to these cutters, he cuts the rough and protruding parts from the sole of the shoe.

[51] Hendrix testified that he joined the Union later in the day on which this conversation took place.

[52] It will be recalled, as hereinabove found, that Dowling instructed Julian Dial, who was assigned to circulate the antiunion petition, to tell those employees who refused to sign that they might get into trouble.

[53] As noted previously, the edge trimmer's job was to finish the edge of the shoe by cutting away the rough and protruding parts from the sole. By cutting too far into the edge of the sole and actually nicking a piece out of the sole, the edge trimmer "cuts" the shoe. If the edge trimmer cuts too far into the edge of the sole but does not nick it, he is "trimming too close."

testified that when an operator "cuts one a day or one a week, that is all right." Hendrix testified that prior to union activity at the plant, when he cut shoes, the foreman would tell him to "watch out and try not to cut so many" but never made too much of it. Soon after union activity commenced, Foreman Dowling told the edge trimmers that their bonus, which was based on production, would be taken away if they cut more than five shoes per week. Despite this warning, Hendrix's undenied, credited testimony is that he never lost bonus payments even though he cut more than the permitted number. From the above and a synthesis of the testimony of other witnesses, I find that the Respondents did not have a rule regarding the permitted number of cut shoes per edge trimmer per week. In this connection, it is noteworthy and I find that prior to the inception of union activity, Respondents did not keep a record of shoes cut by edge trimmers.[54]

Foreman Dowling testified that it is very rare for edge trimmers to cut into shoes when they are watching their operation. In contradiction to Dowling's testimony, the General Counsel adduced the testimony of six edge trimmers, including that of Levy Strickland, concededly the best edge trimmer in the plant, who testified in effect that it is not unusual to cut shoes in their operation and they cut anywhere from three shoes a week to seven a day. They testified further that they have never been threatened with disciplinary action; that on occasion Foreman Dowling reprimanded them and asked them to try not to cut so many shoes. I do not credit Dowling's testimony herein.

Hendrix admitted that in the course of his employment he cut shoes practically every day, the number ranging from 2 to 10. Up until his layoff for a week on January 21 he was never disciplined. Upon the entire record, I find that all edge trimmers cut shoes. However, the record does not reveal that employees were discharged for such incidents prior to the discharge of Hendrix.[55]

As to the second ground for Hendrix's discharge, namely that he was a "chronic late-comer," Hendrix admitted that he reported for work late a few times, but on such occasions, he called Foreman Dowling to report that he was delayed.

As a piece worker, Hendrix did not punch a time clock, but did sign in upon reporting for work. The Respondents did not maintain a record of latenesses. Nor does it appear from the record that employees were discharged for this reason. Foreman Dowling testified that Hendrix was the only edge trimmer who reported for work late.

Testifying further in contradiction to Hendrix's version regarding his latenesses, Dowling stated: "Every morning he was four or five minutes, you know, late; every morning; always his car was broken down or a train had stopped him, something; always an excuse for it." I do not credit Dowling's testimony.

Although under other circumstances, there may be some justification for Hendrix's discharge, I am convinced that the grounds relied upon by the Respondents were merely pretexts to conceal their illegal motivation for his discharge. As mentioned previously, Hendrix was an early and active adherent of the Union.

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[54] This finding is based on the undenied, credited testimony of Julian Dial.

[55] Although Foreman Dowling testified that he twice discharged edge trimmer John Henry Driggers for cutting shoes, I find in accordance with Driggers' testimony, which I credit, that he was discharged in 1944 because he took on other work while the plant was slack and again in 1945 because of a misunderstanding with his foreman. It is interesting to note that in June 1948, while Driggers was working at a competitor's shoe plant, Albert Dowling requested him to return to work for the Respondents. He did so and has been working for the Respondents since. Driggers testified that he cut from one to seven shoes a day since his return but has never been threatened with disciplinary action.

He openly expressed his union sympathies by carrying the membership application book in full view of his foreman, by wearing a union button in the plant, by refusing in the presence of Foreman Dowling to sign the antiunion petition, and by distributing union leaflets in front of the plant. He was also the union shop steward for his department, which must have been known by his foremen.[56] As found heretofore, prior to Hendrix's discharge the Respondents had by various acts interfered with the organizational activities of their employees, indicating their opposition to the Union, and threatening those employees with trouble if they refused to fall in line with the Respondents' antiunion policy. Having found that Respondents did not discharge, let alone reprimand employees for either cutting shoes or reporting late for work, I conclude upon the basis of the foregoing and the record as a whole, that the real motivation for the termination of Hendrix's employment was his activities and membership in the Union and the Respondents' opposition thereto. In view of these circumstances, I find that Hendrix was discriminatorily discharged in violation of Section 8 (a) (3) of the Act.

The refusal to bargain

In a letter mailed on October 26, 1948, the Union advised the Respondents that a majority of their production and maintenance employees were members of the Union and requested the Respondents to recognize it as the collective bargaining agent and meet with it for the purposes of engaging in collective bargaining in respect to rates of pay, hours of employment, and other conditions of employment.

Receiving no answer to this letter, the Union filed a representation petition with the Board under Section 9 (a) of the Act.

On February 25, 1949, after a hearing duly held in the representation proceeding, the Board issued its Decision and Direction of Election,[57] in which it rejected a motion made by the Respondents to dismiss the Union's petition on the grounds: (1) The failure of Philip Murray as president of the Congress of Industrial Organizations to sign the affidavit required by Section 9 (h) of the Act, thus disqualifying the Union which is a constituent unit of the C. I. O., from any relief under the Act; (2) the Union was controlled and dominated by Communist affiliations; and (3) the Union failed to set forth the code number of its letter of compliance issued by the Department of Labor and the statement as to its financial status on its petition.

The Board further found that all production and maintenance employees of the Respondents at their Waycross, Georgia, plant, excluding office clericals, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, and directed that an election be conducted by the Regional Director among the employees in the above-described unit to determine whether they desired to be represented by the Union for the purposes of collective bargaining.

In the election held on March 18, 1949, among the employees in the above-described unit, of the approximately 210 eligible voters, 118 cast valid votes, of which 116 were for the Union and 2 against. No objections being filed to the

[56] The Board held in *L & H Shirt Company, Inc.*, 84 NLRB 248, that in a plant similar in size to the Respondents', it is a reasonable inference that the employees' organizing activities came to the notice of the plant manager. See also *N. L. R. B.* v. *Abbott Worsted Mills*, 127 F. 2d 438, 440 (C. A. 1); *H & H Manufacturing Company, Inc.*, 87 NLRB 300.

[57] *Rubin Brothers Footwear, Inc.*, Case No. 10-RC-430.

conduct of the election within the time provided therefor by the Board's Rules and Regulations, the Regional Director for the Tenth Region, on behalf of the Board on March 28, 1949, certified the Union as the exclusive representative for the purposes of collective bargaining, of the employees in the unit hereinabove described.

In their answer to the complaint in the present proceeding, the Respondents admit that the unit found by the Board is appropriate for the purposes of collective bargaining, but neither admit nor deny that the Union is the representative of a majority of the employees in the appropriate unit. However, they assert for the same reasons urged previously on the motion to dismiss the petition in the representation proceeding and there rejected by the Board, that the Union was and is presently ineligible to serve as the collective bargaining representative of their employees. No new argument or testimony was offered in the present proceeding on these points. I therefore find as did the Board that on and at all times after March 28, 1949, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid bargaining unit and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was on March 28, 1949, and at all times thereafter has been and is now the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.[58]

It is undisputed that subsequent to the Board's certification, the Union on June 28, and August 4, 1949, requested the Respondents to bargain collectively with it, and Respondents refused to do so, assigning again the same reasons urged by them and rejected by the Board in the representation proceeding.

I find that the Respondents on June 28, 1949, and at all times thereafter have refused to bargain collectively with the Union as the exclusive representative of their employees in an appropriate unit and have thereby interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.[59]

The strike

At the hearing, over the objection of counsel for the Respondents, I granted the General Counsel's motion to amend the amended complaint alleging that a strike of the making-department employees on August 9, 1949, was caused and prolonged by the Respondents unfair labor practices.

It was stipulated by the parties that the Union on August 4, 1949, sent the Respondents the following telegram:

> AS REPRESENTATIVE OF UNITED SHOE WORKERS OF AMERICA, CIO, I AM REQUESTING MEETING WITH YOUR COMPANY BY 12 NOON SATURDAY FOR NEGOTIATIONS ON A CONTRACT COVERING UNION RECOGNITION, WAGES, HOURS OF WORK, AND OTHER WORKING CONDITIONS. UNLESS SUCH MEETING CAN BE ARRANGED A WORK STOPPAGE MAY RESULT.

[58] The Board has consistently held that the matter of the Union's compliance with Section 9 (f), (g), and (h) of the Act is one for administrative determination, not litigable by the parties. *Northern Virginia Broadcasters, Inc.*, 75 NLRB 11; *Highland Park Manufacturing Company*, 84 NLRB 744; *Anchor Rug Mill*, 85 NLRB 764; *Pauls Valley Milling Company*, 82 NLRB 455.

[59] Having thus found that the Respondents have refused to bargain collectively with the Union on and since June 28, 1949, in clear violation of Section 8 (a) (5) of the Act, I find it unnecessary to decide whether the Respondents also refused to bargain collectively with the Union on October 26, 1948, as is alleged in the amended complaint.

On the same day the Respondents through their attorney, E. Kontz Bennett, replied with the following telegram:

> RUBIN BROTHERS FOOTWEAR, INC., WAYCROSS, REFERRED YOUR WIRE AUGUST FOURTH TO UNDERSIGNED FOR REPLY. POSITION THIS EMPLOYER YOU ARE NOT LEGALLY CERTIFIED ACCOUNT FAILURE OFFICER'S CIO COMPLY SEC. 9 (H) TAFT-HARTLEY LAW PRIOR PETITION FOR CERTIFICATION. THIS QUESTION BEING DECIDED COURTS NOW. FOR THIS REASON THIS EMPLOYER RESPECTFULLY DECLINES MEETING WITH YOU SATURDAY AUGUST SIXTH AS REQUESTED.

Thereafter, on August 9, the Respondents' making-department employees ceased work concertedly and went on strike.[60]

I find that the August 9 strike of the making-department employees was an unfair labor practice strike caused by the Respondents' unlawful refusal to bargain with the Union and will hereinafter recommend that Respondents reinstate all striking employees, who upon the termination of the strike applied for reinstatement, dismissing, if necessary, all new employees who were employed as replacements after the beginning of the strike. It will also be recommended that if any striking employees are refused reinstatement upon application that such employees be made whole from the date of the refusal to the date of their reinstatement or offer of reemployment. *Julian Freirich Co.*, 86 NLRB 542.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents set forth in Section III, above, occurring in connection with the operations of the Respondents described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I will recommend that they cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

It has been found that the Respondents discriminating in regard to the hire and tenure of employment of 73 employees listed in Appendix A on various dates from September 28 to October 15, 1948. Certain of these employees have been reinstated. I will recommend with respect to those not reinstated that the Respondents offer to each of them immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges. With respect to the entire group, I will recommend the Respondents make each of them whole for any loss of pay he may have suffered by reason of such discrimination, by payment to each of a sum of money equal to that which he normally would have earned as wages from the date of the discrimination to the date of reinstatement or offer of reinstatement[61] less his net earnings during such period.[62]

It has been found that the Respondents discriminatorily reduced the hours of work of their production and maintenance employees causing them to

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[60] The General Counsel offered no other evidence as to the cause of the strike.

[61] As noted previously, the record is not clear as to those employees reinstated and the respective dates of their reinstatements. It is anticipated, of course, that any problems arising in this regard may be settled by the parties upon compliance.

[62] *Crossett Lumber Company*, 8 NLRB 440, 497–498.

suffer a loss of wages during the period from on or about September 27, to on or about December 22, 1948.[63] I will recommend that the Respondents make whole such employees for any loss of wages sustained by reason of such discrimination, by payment to each of them of a sum of money equal to the amount he would normally have earned as wages, had the Respondents not reduced the hours of work, from the date of the discrimination, to on or about December 22, 1948,[64] less his actual earnings [65] during such period.

It has been found that the Respondents discriminatorily discharged Essie Stevens, Julia Griffin, Lola Davis, Docia J. Seabolt, and George W. Hendrix. I will recommend that the Respondents offer to each of them immediate and full reinstatement to his or her former or substantially equivalent position [66] without prejudice to his or her seniority or other rights and privileges, and make each of them whole for any loss of pay he or she may have suffered by reason of such discrimination, by payment to each of a sum of money equal to that which he or she normally would have earned as wages from the date of the discrimination to the date of the offer of reinstatement, less his or her net earnings during such period.

It has been found that on and after June 28, 1949, the Respondents have refused to bargain collectively with United Shoe Workers of America, CIO, as the exclusive representative of their employees in an appropriate unit. I will recommend that the Respondents, upon request, bargain collectively with the said Union.

It has been found that the cause underlying the strike by the making-department employees which commenced on August 9, 1949, was the Respondents' unlawful refusal to bargain with the Union. In order, again, to restore the *status quo* as it existed prior to the time the Respondents engaged in the unfair labor practices I will recommend that the Respondents, upon application made by the making department employees, offer each of them reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, dismissing, if necessary, all persons hired on or after August 9, 1949. Further that the Respondents make whole each making department employee for any loss of pay he may have suffered, or may suffer, by reason of the Respondents' refusal, if any, to reinstate him upon application.

It has also been found that the Respondents by various acts interfered with, restrained, and coerced their employees in the exercise of rights guaranteed by the Act.

The Respondents' fixed intentions to defeat their employees' efforts toward self-organization, as manifested by the interrogation and threats of reprisal if they joined the Union, the layoffs, reductions in hours, discharges, and refusal

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[63] A precise determination of the period when reduced hours of work were in effect cannot be made in the present state of the record. An analysis of the payroll records in evidence reveals that production and maintenance employees worked less than the normal 8-hour day at various times during the period alleged in the amended complaint as set forth above. The ascertainment of these matters can be accomplished at the compliance stage.

[64] See footnote above.

[65] Although ordinarily "net earnings" are deducted from an award of back pay to a discriminatee, since the production and maintenance employees involved herein continued to work for the Respondents, and so far as appears from the record were not employed elsewhere during the period in question, it is only necessary to deduct actual earnings. See footnote 33, *Pick Manufacturing Company*, 35 NLRB 1334, 1358.

[66] In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible and if such position is no longer in existence, then to a substantially equivalent position." See *The Chase National Bank*, 65 NLRB 827.

to bargain, indicates such a disregard of their employees' rights under the Act as to convince me that there exists a danger of the repetition of such violations and of the commission of other unfair labor practices proscribed by the Act. Unless the recommended order is coextensive with the threat the preventive purposes of the Act will be thwarted. Accordingly, in order to effectuate the policies of the Act, to make more effective the interdependent guarantees of Section 7, and to deter the Respondents from future violations of the Act, I will recommend that the Respondents cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

Upon the basis of the foregoing findings of fact and of the entire record in this proceeding, I make the following:

Conclusions of Law

1. United Shoe Workers of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondents have engaged in, and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

3. By discriminatorily laying off the employees listed in Appendix A on various dates between September 28 and October 15, 1948, the Respondents engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. By discriminatorily reducing the hours of work of their production and maintenance employees from on or about September 27 to on or about December 22, 1948, the Respondents engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

5. By discriminatorily discharging Essie Stevens, Julia Griffin, Lola Davis, Docia J. Seabolt, and George W. Hendrix, the Respondents engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

6. All production and maintenance employees of the Respondents at their Waycross, Georgia, plant, excluding office clericals, guards, professional employees, and supervisors as defined in the Act, constitute, and at all times material herein have constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

7. United Shoe Workers of America, CIO, was on March 28, 1949, and at all times thereafter has been, the exclusive representative of all the employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

8. By refusing on June 28, 1949, and thereafter, to bargain with the Union, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

9. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommended Order omitted from publication in this volume.]